SENATE.

TUESDAY, *May 1, 1906.*

Prayer by the Chaplain, Rev. EDWARD E. HALE.

The Journal of yesterday's proceedings was read and approved.

MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by Mr. W. J. BROWNING, its Chief Clerk, announced that the House had passed the following bill and joint resolutions; in which it requested the concurrence of the Senate:

H. R. 15334. An act to authorize the construction of dams and power stations on the Coosa River, at Lock 2, Alabama;

H. J. Res. 145. Joint resolution for the appointment of members of Board of Managers of the National Home for Disabled Volunteer Soldiers; and

H. J. Res. 149. Joint resolution extending the thanks of Congress to Gen. Horace Porter.

PETITIONS AND MEMORIALS.

Mr. KEAN presented a petition of the Home Missionary Society of the Central Presbyterian Church of Orange, N. J., praying for the adoption of an amendment to the Constitution to prohibit polygamy; which was referred to the Committee on the Judiciary.

He also presented a petition of Adopted Daughter Lodge, No. 3, Brotherhood of Locomotive Firemen, of Jersey City, N. J., praying for the passage of the so-called "employers' liability bill;" which was referred to the Committee on Interstate Commerce.

He also presented petitions of the Woman's Home Missionary Society of the Emery Methodist Episcopal Church, of Jersey City, and of sundry citizens of Westfield, Newark, and Plainfield, all in the State of New Jersey, praying that the direction of the Alaskan schools may remain with the United States Bureau of Education; which were referred to the Committee on Territories.

Mr. NELSON presented a petition of the Minnesota State convention, praying for an investigation of the charges made and filed against Hon. REED SMOOT, a Senator from the State of Utah; which was referred to the Committee on Privileges and Elections.

He also presented a petition of Local Union No. 186, Brotherhood of Painters, Decorators, and Paper Hangers of America, of Minneapolis, Minn., and a petition of sundry citizens of Red Wing, Minn., praying for the enactment of legislation to remove the duty on denaturized alcohol; which were referred to the Committee on Finance.

Mr. GALLINGER presented a petition of the Society for Political Study of New York City, N. Y., praying for the enactment of legislation to establish a children's bureau in the Department of the Interior; which was referred to the Committee on Education and Labor.

Mr. BEVERIDGE presented petitions of Local Union No. 373, Brotherhood of Painters, Decorators, and Paper Hangers of America, of Vincennes; of the N. P. Bowsher Company, of South Bend, and of Local Union No. 63, Brotherhood of Painters, Decorators, and Paper Hangers of America, of Elkhart, all in the State of Indiana, praying for the enactment of legislation to remove the duty on denaturized alcohol; which were referred to the Committee on Finance.

He also presented a petition of the Local Council of Women of Union City, Ind., and a petition of Rathbone Sisters, National Council of Women, of Union City, Ind., praying that an appropriation be made for a scientific investigation into the industrial conditions of women in the United States; which were referred to the Committee on Education and Labor.

He also presented a petition of the congregation of the Presbyterian Church of Hanover, Ind., praying for the adoption of an amendment to the Constitution to prohibit polygamy; which was referred to the Committee on the Judiciary.

He also presented a petition of the Lake Mohonk Indian conference, of Indiana, praying for the enactment of legislation to aid education in the Territories and the insular possessions of the United States; which was referred to the Committee on Pacific Islands and Porto Rico.

He also presented petitions of Local Division No. 81, Amalgamated Association of Street and Electric Railway Employees of America, of Muncie; of Local Division No. 394, Amalgamated Association of Street and Railway Employees of America, of Tipton, and of Black Diamond Local Union No. 2412, United Mine Workers of America, of Linton, all in the State of Indiana, praying for the enactment of legislation to restrict immigration; which were referred to the Committee on Immigration.

Mr. PENROSE presented a petition of the Woman's Club of New Brighton, Pa., praying that an appropriation be made for a scientific investigation into the industrial conditions of women in the United States; which was referred to the Committee on Education and Labor.

REPORTS OF COMMITTEES.

Mr. McENERY, from the Committee on Private Land Claims, to whom was referred the bill (S. 5531) for the relief of Francisco Krebs, reported it with an amendment, and submitted a report thereon.

Mr. HALE, from the Committee on Naval Affairs, to whom was referred the bill (S. 4946) for the relief of certain naval officers and their legal representatives, asked to be discharged from its further consideration, and that it be referred to the Committee on Claims; which was agreed to.

Mr. ALDRICH, from the Committee on Finance, to whom was referred the bill (H. R. 8973) to amend section 5200, Revised Statutes of the United States, relating to national banks, reported it with an amendment, and submitted a report thereon.

He also, from the same committee, to whom was referred the bill (H. R. 15266) to amend existing laws relating to the fortification of pure sweet wines, reported it without amendment, and submitted a report thereon.

THE ZEBULON MONTGOMERY PIKE MONUMENT ASSOCIATION.

Mr. TELLER. From the Committee on Finance I report back with an amendment the bill (H. R. 13783) to grant souvenir medallions for the Zebulon Montgomery Pike Monument Association. It is purely a local matter, and I ask that the bill may be put on its passage. The amendment is as to the date. The bill has the favorable report of the Department.

The Secretary read the bill; and there being no objection, the Senate, as in Committee of the Whole, proceeded to its consideration.

The amendment of the Committee on Finance was, in section 2, on page 2, line 14, to strike out "May" and insert "August," so as to read:

That the material from which said proposed medallions are to be made shall be furnished by the Secretary of the Treasury on or before the 1st day of August, 1906.

The amendment was agreed to.

The bill was reported to the Senate as amended, and the amendment was concurred in.

The amendment was ordered to be engrossed, and the bill to be read a third time.

The bill was read the third time, and passed.

BILLS INTRODUCED.

Mr. BURKETT introduced a bill (S. 5966) granting an increase of pension to C. C. Davis; which was read twice by its title, and referred to the Committee on Pensions.

Mr. CLARK of Wyoming introduced a bill (S. 5967) to acquire certain land in Washington Heights for a public park and site for the McClellan statue; which was read twice by its title, and referred to the Committee on the District of Columbia.

Mr. WETMORE introduced the following bills; which were severally read twice by their titles, and, with the accompanying papers, referred to the Committee on Pensions:

A bill (S. 5968) granting a pension to Louisa Thompson;

A bill (S. 5969) granting an increase of pension to Franklin Burdick; and

A bill (S. 5970) granting an increase of pension to Julia A. Horton.

Mr. CULLOM introduced the following bills; which were severally read twice by their titles, and referred to the Committee on Foreign Relations:

A bill (S. 5971) relative to the fees of attorneys in cases before the Spanish Treaty Claims Commission; and

A bill (S. 5972) relative to appeals from the Spanish Treaty Claims Commission.

Mr. CLAY introduced a bill (S. 5973) for the relief of Wellborn Echols; which was read twice by its title, and, with the accompanying papers, referred to the Committee on Claims.

Mr. FLINT introduced the following bills; which were severally read twice by their titles, and referred to the Committee on Public Buildings and Grounds:

A bill (S. 5974) for the restoration and repair of the United States post-office building at San Francisco, Cal., damaged by earthquake and fire;

A bill (S. 5975) for restoring and repairing the building occupied by the United States mint at San Francisco, Cal., damaged by earthquake and fire;

A bill (S. 5976) for restoring and repairing the warehouse occupied by the United States appraisers at San Francisco, Cal., damaged by earthquake and fire;

A bill (S. 5977) for the restoration and repair of the United

States subtreasury building at San Francisco, Cal., damaged by earthquake and fire;

A bill (S. 5978) for the restoration and repair of the United States post-office building at Oakland, Cal., damaged by earthquake and fire; and

A bill (S. 5979) for the restoration and repair of the United States post-office building at San Jose, Cal., damaged by earthquake and fire.

Mr. McCUMBER introduced a bill (S. 5980) granting an increase of pension to Jacob Smith; which was read twice by its title, and, with the accompanying papers, referred to the Committee on Pensions.

He also introduced a bill (S. 5981) granting an increase of pension to John H. La Vaque; which was read twice by its title, and referred to the Committee on Pensions.

Mr. BEVERIDGE introduced a bill (S. 5982) granting a pension to Harriett Sprague Robins; which was read twice by its title, and referred to the Committee on Pensions.

Mr. PENROSE introduced the following bills; which were severally read twice by their titles, and, with the accompanying papers, referred to the Committee on Pensions:

A bill (S. 5983) granting a pension to Lizzie C. Gregory; and

A bill (S. 5984) granting an increase of pension to Benedict Sutter.

Mr. PENROSE introduced a bill (S. 5985) to pay the findings of the Court of Claims upon the brig Amelia, Houston, master, under act of January 20, 1885; which was read twice by its title, and referred to the Committee on Claims.

Mr. HALE introduced a joint resolution (S. R. 53) authorizing the Secretary of the Navy to receive for instruction at the Naval Academy, at Annapolis, Daniel Caballero and Andres Cardenas, of Peru; which was read twice by its title, and referred to the Committee on Naval Affairs.

AMENDMENTS TO DISTRICT OF COLUMBIA APPROPRIATION BILL.

Mr. BURKETT submitted an amendment proposing to appropriate $2,500 for completing the paving of Florida avenue from Eighteenth street to Connecticut avenue, intended to be proposed by him to the District of Columbia appropriation bill; which was referred to the Committee on Appropriations, and ordered to be printed.

Mr. PENROSE submitted an amendment proposing to appropriate $3,000 for grading and improving Eighteenth street from Minnesota avenue to Harrison street, Anacostia, D. C., intended to be proposed by him to the District of Columbia appropriation bill; which was referred to the Committee on the District of Columbia, and ordered to be printed.

AMENDMENT TO RAILROAD RATE BILL.

Mr. FULTON submitted an amendment intended to be proposed by him to the bill (H. R. 12987) to amend an act entitled "An act to regulate commerce," approved February 4, 1887, and all acts amendatory thereof, and to enlarge the powers of the Interstate Commerce Commission; which was ordered to lie on the table and be printed.

PROPOSED METROPOLITAN POLICE INVESTIGATION.

Mr. TILLMAN. I send a resolution to the desk and ask that it be read and lie over under the rule.

The resolution was read, as follows:

Resolved, That the Committee on the District of Columbia be directed to investigate the circumstances of the arrest in the city of Washington, January 4, 1906, by the Metropolitan police of Mrs. Minor Morris, and her carriage, attended by indignity and cruelty, through the grounds and basement of one of the public buildings and thence, after being thrown violently into a cab, to the house of detention, and her incarceration for four hours on a charge of disorderly conduct, and later of insanity;

And also to investigate the manner and result of an inquiry made by Maj. Richard Sylvester, superintendent of the Metropolitan police, into the facts of the case; and to inquire whether said investigation was fair and unprejudiced and all the impartial and available witnesses examined;

Whether said superintendent undertook to make an investigation by the use of detectives and secret-service men concerning the previous life and reputation of Mrs. Morris;

Whether he procured and made use of a statement of one H. B. Weaver, M. D., who falsely pretended that Mrs. Morris had been a patient of his in Asheville, N. C., two years ago;

Whether there is any police regulation in the city of Washington which requires that any person arrested shall not be released until taken to police headquarters and there detained until a police inquiry is instituted and ended;

And especially to inquire whether the said superintendent of police and one of the chief witnesses against Mrs. Morris have since received recognition by the appointment of near relatives to office; and whether any laws should be adopted by Congress for the better regulation and improvement of the police force of the city of Washington.

The VICE-PRESIDENT. The resolution will be printed and lie over.

REGULATION OF RAILROAD RATES.

Mr. LODGE. I ask that there may be printed in pamphlet form the amendments which have been proposed to the railroad-rate bill. I ask that the amendments may be printed in the order of the sections of the bill—that is, in the order in which they will be taken up under the unanimous-consent agreement for consideration. I think it would be a great convenience to Senators to have all the amendments in one compact form.

Mr. ALLISON. In bill form?

Mr. LODGE. Yes; in pamphlet form, printed all together. They will be printed from the bill print. I mean only to put them in pamphlet form.

Mr. ALLISON. In bill size?

Mr. LODGE. Yes.

Mr. GALLINGER. I suggest to the Senator that probably some of them do not refer to any specific section, and those could be printed, I suppose, at the end.

Mr. LODGE. At the end, where there is no specific section referred to.

The VICE-PRESIDENT. Is there objection to the request?

Mr. TILLMAN. I suggest to the Senator that if they are printed in the form in which they have been offered with lines and all that, it would be much easier for us to keep tab on them to have them bound in the form in which they are already printed.

Mr. LODGE. They can be bound in that form. It will answer every purpose. My only desire is to get them together in a form like that.

Mr. TILLMAN. Will the Senator accept as an amendment that they shall be bound together?

Mr. LODGE. Certainly; bound together.

Mr. TILLMAN. There is no need of any more printing of the amendments.

Mr. LODGE. There are plenty of copies, and they can be bound together in the form in which they are now, and in the order in which they would be considered—that is, in the order of the sections.

Mr. TILLMAN. Some of them make no reference to sections.

Mr. LODGE. All those would come at the end.

Mr. TILLMAN. I was going to suggest that it might be better to classify them by having those which refer to the court review and nonsuspension provisions in one bunch, and so on down with one subject, and with an index.

Mr. LODGE. That will be done by printing them according to the sections. The court-review amendments would come under one section. I think the arrangement by sections will cover the order of the amendments as well as anything.

Mr. ALDRICH. I have no objection to any number of amendments being reprinted if the Senate desires it, but of course there will be no understanding or obligation as to any order of amendments.

Mr. LODGE. Oh, no; not the least.

Mr. ALDRICH. The Senate will be perfectly free to take any course it deems best.

Mr. LODGE. Of course we can not set aside the rules of the Senate. A Senator can offer an amendment at any stage to any part of the bill. But the unanimous-consent agreement was that the bill should be read by sections for the purpose of amendment. I thought it would be a mere matter of convenience to have all the amendments bound together in the order of the sections; I thought it would save us a great deal of trouble; that is all.

The VICE-PRESIDENT. The Chair understands the request of the Senator from Massachusetts to be that the amendments be bound together.

Mr. LODGE. So that each Senator may have a copy for his own use.

The VICE-PRESIDENT. The Senator from Massachusetts does not ask for a further print?

Mr. LODGE. No; I do not ask for a further print.

Mr. NELSON. Would it not be well to print in that connection the name of the Senator who introduced the amendment?

Mr. LODGE. That appears upon every amendment now. The only proposition is to bind the printed amendments just as they are here.

Mr. BACON. Does that include a copy of the bill to be bound with the amendments?

Mr. LODGE. Substitute bills?

Mr. BACON. The original bill, the House bill.

Mr. LODGE. Oh, no.

Mr. BACON. I think that ought to be included. It would be more convenient.

Mr. LODGE. I think it would be a great deal better to keep the bill separate.

Mr. BACON. Let it include the bill and substitute bills and the amendments.

Mr. LODGE. I think it would be much better to keep the bill separate from the amendments.

Mr. BACON. I have already had it done in that shape for my own personal convenience, and I find it very convenient to have the bills under the same cover with the amendments. Still, I shall not insist upon it.

Mr. LODGE. It would seem to me to be much more convenient to keep the amendments separate from the bill. We shall all have bills here to follow, of course. Then, if we have the amendments under a separate cover, we can turn to the amendments as they are taken up.

The VICE-PRESIDENT. Will the Senator from Massachusetts kindly restate his request?

Mr. LODGE. I ask that all amendments which have been offered to the railway rate bill may be bound in pamphlet form, a copy for each Senator, in the order of the sections to which they are offered.

The VICE-PRESIDENT. Without objection, it is so ordered.

The order was reduced to writing, as follows:

Ordered, That there be printed and stitched, in bill form, 200 sets of all the amendments proposed to the bill H. R. 12987, "An act to regulate commerce," etc., the arrangement to be in the order of the sections of the bill, and where the amendments, if any, do not designate the section to which they should be attached they are to be placed at the end.

Mr. ALDRICH. While this matter is before the Senate, I desire to see if I understand the order of the Senate made yesterday. I do not understand that the rule as agreed to prevents the presentation and disposition of amendments between now and Friday, if the Senate so orders or so desires.

Mr. BACON. I scarcely think that that suggestion would be consistent with the consent rule.

Mr. ALDRICH. I tried to state yesterday that my understanding was that amendments may be offered in the meantime. There is an amendment now pending offered by the Senator from Ohio [Mr. FORAKER]. I think that amendment could be disposed of, if the Senate so choose, between now and Friday—in other words, there is a special rule for Friday as to the amendments under a limited time for discussion. I do not know of any reason why, if we have time between now and Friday, we may not be able to dispose of some of the amendments.

Mr. TILLMAN. I thought I gave notice yesterday evening that the bill would be held before the Senate and we would either begin to vote on some amendments or we had to talk on something connected with it.

Mr. ALDRICH. That is my understanding.

Mr. TILLMAN. I expect to stand by that proposition and hope to get a vote on amendments before next Friday. We will certainly have to talk or vote, one or the other.

Mr. LODGE. Mr. President——

The VICE-PRESIDENT. Does the Senator from Rhode Island yield to the Senator from Massachusetts?

Mr. ALDRICH. Certainly I yield to him for a question. I am simply stating my own understanding of the order and I see that the Senator from South Carolina agrees with me in the interpretation of the order. It seems to me clearly the right of anyone to have an amendment disposed of before Friday. I see no particular reason why we should spend two or three days in debate without a vote. I am anxious to get a vote on the bill. I am not so sure that we can not dispose of the whole bill before Friday.

Mr. LODGE. I had supposed that the purpose of the agreement was to give notice to Senators that the voting on the amendments should begin on Friday.

Mr. ALDRICH. That is to be done under the fifteen-minute rule, and it was distinctly understood.

Mr. LODGE. I stated yesterday that I thought there were two points that it was desirable to determine, when we should begin to vote on the amendments and when we should take the final vote on the bill, and I supposed the unanimous-consent agreement was simply to fix a time at which the voting should begin. Of course, if we should begin voting to-day that notice would be of no value.

Mr. BACON. I do not refer now to the RECORD, but my recollection is in accord with what the Senator from Massachusetts has just stated. The agreement which was reached as to what should begin on Friday was in response to the suggestion made by him that it was important that Senators should know on what date voting on amendments would be in order.

Mr. LODGE. That is my understanding, certainly.

Mr. BACON. It was in response to that suggestion that after considerable colloquy between Senators it was so arranged and so agreed, that on Friday we would take up the bill by sections beginning with the first section and proceed with it under the fifteen-minute rule. If that is not a plain and definite agreement to the effect that it shall not be done before then, I am unable to properly construe language.

Furthermore, we all remember what the Senator from South Carolina said as to his purpose to require that the debate should continue or a vote should be called for; but when we reached the unanimous-consent agreement it certainly supplanted that previous expression of intention on his part.

Mr. LODGE. Otherwise the agreement is worthless.

Mr. BACON. It is absolutely worthless unless that is the case; and the Senator from South Carolina himself, by agreeing to it necessarily abandoned his preconceived and expressed determination to proceed with the debate, or in the absence of debate to call for a vote.

Mr. TILLMAN. Will the Senator allow me?

Mr. BACON. Certainly.

Mr. TILLMAN. The Senator will recall that four or five suggestions were made yesterday afternoon as to what the form of the agreement should be, and that they were all objected to. Finally I declared that I felt it to be my duty to get the bill before the Senate and keep it there, knowing that under the rule there must be debate or a vote would be had. I tried to get an arrangement for a fixed day, but could not. I was notified by the Senator from Texas, who is absent, that two or three Senators had signified their desire to make blanket speeches and they did not want to be limited by the fifteen-minute rule. Therefore I suggested finally that the fifteen-minute rule should begin its operation on Friday, but I did not feel, and I do not feel now, that there was any implied obligation on my part to prevent a vote on any amendment until Friday.

Mr. LODGE. Mr. President——

Mr. BACON. I will ask, with the Senator's permission, this question——

The VICE-PRESIDENT. Does the Senator from South Carolina yield to the Senator from Massachusetts?

Mr. TILLMAN. Certainly.

Mr. LODGE. I wish merely to call his attention to what occurred in the debate yesterday evening.

Mr. LODGE. It seems to me it is important that all Senators should have due notice of two things—when the final vote is to be taken and when the voting on amendments is to begin. I think there ought to be notice of those two facts.

Mr. TILLMAN. I have tried to get an opportunity to do that.

Mr. LODGE. I know the Senator has. I am entirely agreed with his original proposition.

Mr. TILLMAN. I said I tried three or four times—indeed, I tried half a dozen times to get that arrangement made, but never could succeed.

Mr. ALDRICH. The colloquy to which the Senator alludes took place long before the final arrangement was made and before an objection was entered on the part of the Senator from Alabama [Mr. MORGAN].

Mr. BACON. I beg the Senator's pardon, after the agreement which was made there was no such announced intention on the part of the Senator from South Carolina. On the same page from which the Senator from Massachusetts has just read, after the statement which he has just read, that it was important that Senators should know when the voting on amendments is to begin, the colloquy proceeded, and finally the junior Senator from Texas made this suggestion:

Mr. BAILEY. I believe the Senator from South Carolina can get an agreement that next Friday morning we shall take up this bill, to be read by sections; that as each section is read amendments to that section shall be in order, and that each amendment shall be subject to consideration under the fifteen-minute rule, and when considered shall be disposed of. I believe the Senator can get that.

Mr. FRYE. So do I.

Mr. TILLMAN. I will ask unanimous consent for that.

Therefore this consent was given on the request of the Senator from South Carolina. Then the Secretary read the request:

The VICE-PRESIDENT. The Secretary will report the request of the Senator from South Carolina for unanimous consent.

Mr. TILLMAN. Now, Mr. President——

Mr. BACON. The Senator will pardon me just a moment so I may complete the record.

The Secretary read as follows:

"It is agreed, by unanimous consent, that on Friday, May 4, 1906, immediately upon the conclusion of the routine morning business, the Senate will proceed to the consideration of the bill H. R. 12987, the bill to be read by sections for the purpose of amendment, the discussion upon amendments to proceed under the fifteen-minute rule"——

Mr. TILLMAN. And amendments to be disposed of when the discussion closes.

The Secretary read as follows:

"The amendments to be disposed of when the discussion thereon is concluded."

The VICE-PRESIDENT. Is there objection?

Then there was colloquy by Messrs. ALLISON, TELLER, MORGAN, and TILLMAN as to the time. Finally the Vice-President asked the question:

Is there objection? The Chair hears none, and it is so ordered.

Now, I want simply to say to the Senator from South Carolina, with his permission, that if instead of an agreement to take up

amendments on that day and vote the agreement had been to take up the bill on that day and vote, certainly the Senator would not contend that in the interim if debate failed the vote could be demanded by him. As to this agreement there was no suggestion by him that it was his purpose to keep the bill before the Senate and call for a vote if debate failed.

Mr. ALDRICH. Will the Senator from Georgia allow me to ask him a question?

Mr. BACON. With pleasure.

Mr. ALDRICH. Does the Senator contend that if debate should be exhausted between now and Friday the Senate would be precluded by this arrangement from taking a vote?

Mr. LODGE. Undoubtedly.

Mr. BACON. Undoubtedly. Otherwise the agreement means nothing. It very frequently happens, as the Senator will certainly recall, that when the Senate has made an agreement to vote on a certain day at a certain hour, debate would cease before that time and other business was taken up to occupy the interval, and the Senate carried out its original unanimous-consent agreement.

Mr. ALDRICH. This is not an agreement to vote on the bill at a certain hour. This is simply an agreement to limit debate with a certain limitation; that is all. It is no agreement to vote at any time, but simply an agreement that debate shall be limited under the fifteen-minute rule.

Mr. BACON. I beg the Senator's pardon.

Mr. ALDRICH. We can vote Friday or any other day on the whole bill and the amendments. I do not see why we should spend three or four days without voting upon amendments.

Mr. TILLMAN. Will the Senator from Georgia let me try to disentangle this matter?

Mr. BACON. With pleasure.

Mr. TILLMAN. I want to say there is no need for looking down the road to meet trouble until it gets here. And now I want to get my skirts clear. I want to renew the request for a day to be fixed when we can get a vote, and if I can get that I will very readily and gladly yield to the Senator's contention as to what he says has been already agreed to, because I do not myself feel that it is altogether just to absent Senators not to give them time to get here and participate in the running debate under the fifteen-minute rule, and also in voting on the amendments.

Now, I renew the request which I made yesterday afternoon, that on Thursday, the 10th, at 2 o'clock, the debate on the bill and on amendments then pending shall be concluded; that we will then take up the bill and vote on it and complete it before we adjourn that night.

Mr. BEVERIDGE. Does the Senator think he should make that request in the absence of the Senator from Alabama [Mr. MORGAN]? The Senator from Alabama objected to that request yesterday, and I observe that he is not in his seat.

Mr. TILLMAN. Then, I withdraw it until the Senator from Alabama comes in. I ask that the bill be laid before the Senate. I understand the Senator from Minnesota [Mr. NELSON] wants to speak upon it, and also the Senator from Virginia [Mr. DANIEL].

The VICE-PRESIDENT. The Senator from South Carolina asks unanimous consent——

Mr. PENROSE. I understand that the morning business is not over.

Mr. TILLMAN. I will yield to the Senator from Pennsylvania to introduce a bill.

[The bills introduced by Mr. PENROSE appear under their appropriate heading.]

Mr. BEVERIDGE subsequently said: I wish to ask a question of the Senator from South Carolina or the Chair, and that is whether the question which was under discussion as to whether there could be a vote before the day named in the unanimous-consent agreement has been determined?

Mr. TILLMAN. It has not. It just dropped out of sight for the moment.

PRESIDENTIAL APPROVALS.

A message from the President of the United States, by Mr. B. F. BARNES, one of his secretaries, announced that the President had approved and signed the following acts:

On April 26:

S. 306. An act granting a pension to Cassy Cottrill;
S. 1203. An act granting a pension to Albert B. Lawrence;
S. 1354. An act granting a pension to Lydia Jones;
S. 1376. An act granting a pension to Adam Werner;
S. 1407. An act granting a pension to John McCaughen;
S. 1614. An act granting a pension to Kate E. Young;
S. 2115. An act granting a pension to Carrie E. Costinett;
S. 2832. An act granting a pension to Susan Pennington;
S. 3303. An act granting a pension to Harriett B. Summers;
S. 3817. An act granting a pension to Margaret Lewis;
S. 97. An act granting an increase of pension to Thomas F. Carey;
S. 98. An act granting an increase of pension to Doris F. Clegg;
S. 230. An act granting an increase of pension to Alfred Woodin;
S. 249. An act granting an increase of pension to Alfred F. Sears;
S. 337. An act granting an increase of pension to Lydia Ann Jones;
S. 450. An act granting an increase of pension to James Flynn;
S. 487. An act granting an increase of pension to William Sprouse;
S. 518. An act granting an increase of pension to William T. Godwin;;
S. 520. An act granting an increase of pension to William D. Johnson;
S. 524. An act granting an increase of pension to Lestina M. Gifford;
S. 558. An act granting an increase of pension to Abijah Chamberlain;
S. 563. An act granting an increase of pension to Thomas Martin;
S. 657. An act granting an increase of pension to Mary J. Reynolds;
S. 674. An act granting an increase of pension to Thomas A. Agur;
S. 829. An act granting an increase of pension to James Gannon;
S. 835. An act granting an increase of pension to John W. Scott;
S. 914. An act granting an increase of pension to Edwin R. Hardy;
S. 920. An act granting an increase of pension to Abraham S. Brown;
S. 975. An act granting an increase of pension to James Shaffer;
S. 1012. An act granting an increase of pension to Samuel H. Foster;
S. 1105. An act granting an increase of pension to Harriet Williams;
S. 1162. An act granting an increase of pension to Nelson Cook;
S. 1165. An act granting an increase of pension to James Moss;
S. 1302. An act granting an increase of pension to William A. Murray;
S. 1338. An act granting an increase of pension to Thomas Claiborne;
S. 1349. An act granting an increase of pension to Daniel C. Earle;
S. 1352. An act granting an increase of pension to Michael Scannell;
S. 1377. An act granting an increase of pension to John R. Brown;
S. 1398. An act granting an increase of pension to Edmund Morgan;
S. 1406. An act granting an increase of pension to Moses Hill;
S. 1415. An act granting an increase of pension to Alexander Esler;
S. 1434. An act granting an increase of pension to Samuel Derry;
S. 1435. An act granting an increase of pension to Lewellen T. Davis;
S. 1667. An act granting an increase of pension to John A. Stockwell, alias John Stockwell;
S. 1733. An act granting an increase of pension to George W. Trice;
S. 1884. An act granting an increase of pension to Frederic W. Swift;
S. 1910. An act granting an increase of pension to Theodore McClellan;
S. 1919. An act granting an increase of pension to Louise M. Wynkoop;
S. 1952. An act granting an increase of pension to Jesse Alderman;
S. 1953. An act granting an increase of pension to Charles M. Benson;
S. 1962. An act granting an increase of pension to Julia Baldwin;
S. 2033. An act granting an increase of pension to David Tremble;

S. 2050. An act granting an increase of pension to Jotham T. Moulton;
S. 2077. An act granting an increase of pension to Alice A. Arms;
S. 2094. An act granting an increase of pension to Rodney W. Torrey;
S. 2102. An act granting an increase of pension to George W. Lucas;
S. 2287. An act granting an increase of pension to James V. Pope;
S. 2378. An act granting an increase of pension to Maria Leuckart;
S. 2507. An act granting an increase of pension to William Wheeler;
S. 2540. An act granting an increase of pension to Benjamin S. Miller;
S. 2549. An act granting an increase of pension to George W. Boyles;
S. 2552. An act granting an increase of pension to Louise J. D. Leland;
S. 2568. An act granting an increase of pension to Noah C. Fowler;
S. 2574. An act granting an increase of pension to Parker Pritchard;
S. 2575. An act granting an increase of pension to Thomas W. Waugh;
S. 2577. An act granting an increase of pension to Francis M. Lynch;
S. 2638. An act granting an increase of pension to Thomas B. Whaley;
S. 2667. An act granting an increase of pension to Benjamin W. Valentine;
S. 2670. An act granting an increase of pension to Marie J. Spicely;
S. 2689. An act granting an increase of pension to Alonzo M. Bartlett;
S. 2725. An act granting an increase of pension to John Mather;
S. 2733. An act granting an increase of pension to Charles Crismon;
S. 2736. An act granting an increase of pension to James Williams;
S. 2745. An act granting an increase of pension to Zerelda N. McCoy;
S. 2772. An act granting an increase of pension to Charles H. Niles;
S. 2790. An act granting an increase of pension to William J. Millett;
S. 2795. An act granting an increase of pension to John Albert;
S. 2952. An act granting an increase of pension to William A. Gipson;
S. 2953. An act granting an increase of pension to Mary L. Burr;
S. 2970. An act granting an increase of pension to Thomas E. Keith;
S. 2973. An act granting an increase of pension to Minard Van Patten;
S. 3024. An act granting an increase of pension to David S. Trumbo;
S. 3035. An act granting an increase of pension to Charles W. Shedd;
S. 3112. An act granting an increase of pension to James H. Gardner;
S. 3182. An act granting an increase of pension to Walter Lynn;
S. 3222. An act granting an increase of pension to Henry Golder;
S. 3232. An act granting an increase of pension to Mary Jane Schnure;
S. 3252. An act granting an increase of pension to David F. Crampton;
S. 3254. An act granting an increase of pension to Anna Frances Hall;
S. 3257. An act granting an increase of pension to Walter Green;
S. 3284. An act granting an increase of pension to Charles B. Fox;
S. 3296. An act granting an increase of pension to Patrick Burk;
S. 3297. An act granting an increase of pension to George Conklin;
S. 3298. An act granting an increase of pension to John B. Ashelman;
S. 3300. An act granting an increase of pension to Lorenzo D. Huntley;
S. 3419. An act granting an increase of pension to Joseph H. Beale;
S. 3465. An act granting an increase of pension to John T. Vincent;
S. 3484. An act granting an increase of pension to Jacob A. Field;
S. 3493. An act granting an increase of pension to Thomas Reed;
S. 3520. An act granting an increase of pension to Ada A. Thompson;
S. 3524. An act granting an increase of pension to John N. Henry;
S. 3525. An act granting an increase of pension to Robert G. Harrison;
S. 3532. An act granting an increase of pension to Anna K. Carpenter;
S. 3566. An act granting an increase of pension to John Carpenter;
S. 3584. An act granting an increase of pension to Peter Quermbeck;
S. 3598. An act granting an increase of pension to Charles D. Brown;
S. 3618. An act granting an increase of pension to Martha E. Wardlaw;
S. 3641. An act granting an increase of pension to William P. Marshall;
S. 3653. An act granting an increase of pension to Francis J. Keffer;
S. 3676. An act granting an increase of pension to James M. McCorkle;
S. 3811. An act granting an increase of pension to Ephraim Winters;
S. 3812. An act granting an increase of pension to Truman R. Stinehour;
S. 3819. An act granting an increase of pension to William H. Houston;
S. 3821. An act granting an increase of pension to Henry Wilhelm;
S. 3834. An act granting an increase of pension to Robert McCally;
S. 3835. An act granting an increase of pension to Luther M. Royal; and
S. 3839. An act granting an increase of pension to John T. Brothers.

On April 27:

S. 1248. An act granting a pension to Elizabeth B. Bean;
S. 4146. An act granting a pension to John W. Hall;
S. 4309. An act granting a pension to Adele Jeanette Hughes;
S. 4386. An act granting a pension to George Thomas;
S. 4473. An act granting a pension to Hannah C. Peterson;
S. 4548. An act granting a pension to Hannah E. Wilmer;
S. 4826. An act granting a pension to Sarah Agnes Earl;
S. 1308. An act granting an increase of pension to Emilie Grace Reich;
S. 3843. An act granting an increase of pension to Rollin T. Waller;
S. 3893. An act granting an increase of pension to David C. Howard;
S. 3984. An act granting an increase of pension to Sarah E. Yockey;
S. 3985. An act granting an increase of pension to Matilda E. Nattinger;
S. 3987. An act granting an increase of pension to Samuel H. Hancock;
S. 3996. An act granting an increase of pension to David Morehart;
S. 4088. An act granting an increase of pension to Charles E. Chapman;
S. 4102. An act granting an increase of pension to John A. Broadwell;
S. 4106. An act granting an increase of pension to Katherine Wills;
S. 4110. An act granting an increase of pension to Absalom Wilcox;
S. 4124. An act granting an increase of pension to Alden Fuller;
S. 4180. An act granting an increase of pension to William C. Quigley;
S. 4186. An act granting an increase of pension to Samuel G. Roberts;
S. 4228. An act granting an increase of pension to Joel S. Weiser;

S. 4233. An act granting an increase of pension to Edward M. Barnes;
S. 4247. An act granting an increase of pension to Carrick Rutherford;
S. 4258. An act granting an increase of pension to James F. Hackney;
S. 4279. An act granting an increase of pension to Fannie E. Malone;
S. 4288. An act granting an increase of pension to William E. Anderson;
S. 4301. An act granting an increase of pension to Louisa Arnold;
S. 4315. An act granting an increase of pension to Elizabeth A. Vose;
S. 4324. An act granting an increase of pension to James H. Noble;
S. 4325. An act granting an increase of pension to Jabez Miller;
S. 4360. An act granting an increase of pension to John P. Dunn;
S. 4409. An act granting an increase of pension to James W. Linnahan;
S. 4424. An act granting an increase of pension to Nettie E. Tolles;
S. 4432. An act granting an increase of pension to James Dreury;
S. 4440. An act granting an increase of pension to Joseph Kauffman;
S. 4520. An act granting an increase of pension to Albert L. Callaway;
S. 4541. An act granting an increase of pension to Benson H. Bowman;
S. 4551. An act granting an increase of pension to John F. White;
S. 4556. An act granting an increase of pension to William Jandro;
S. 4557. An act granting an increase of pension to John R. McCrillis;
S. 4606. An act granting an increase of pension to Kate Gilmore;
S. 4612. An act granting an increase of pension to Jesse A. Thomas;
S. 4622. An act granting an increase of pension to Isaiah McDaniel;
S. 4650. An act granting an increase of pension to Thomas McDonald;
S. 4675. An act granting an increase of pension to Fannie P. Norton;
S. 4683. An act granting an increase of pension to William McCann;
S. 4689. An act granting an increase of pension to John Brown;
S. 4691. An act granting an increase of pension to Aaron J. Burget;
S. 4717. An act granting an increase of pension to Ellen A. Gibbon;
S. 4775. An act granting an increase of pension to Thomas A. Maulsby;
S. 4785. An act granting an increase of pension to Nehemiah M. Brundege;
S. 4786. An act granting an increase of pension to George W. Coughanour;
S. 4797. An act granting an increase of pension to Jacob Franz;
S. 4817. An act granting an increase of pension to Delight A. Allen;
S. 4834. An act granting an increase of pension to Octave Counter;
S. 4877. An act granting an increase of pension to Amanda O. Webber;
S. 4917. An act granting an increase of pension to Alfred B. Chilcote;
S. 4972. An act granting an increase of pension to Sarah E. Hull;
S. 4986. An act granting an increase of pension to Alfred Beham;
S. 5016. An act granting an increase of pension to Charles G. Polk;
S. 5074. An act granting an increase of pension to James I. Mettler;
S. 5079. An act granting an increase of pension to Andrew J. Hunter;
S. 5121. An act granting an increase of pension to James H. Haman;
S. 5172. An act granting an increase of pension to John M. De Puy;
S. 5244. An act granting an increase of pension to Horace A. Gregory;
S. 5287. An act granting an increase of pension to John M. Prentiss;
S. 5323. An act granting an increase of pension to Newton G. Cook;
S. 5324. An act granting an increase of pension to Peter Sloggy; and
S. 5520. An act to amend an act entitled "An act granting to the Choctaw, Oklahoma and Gulf Railroad Company the power to sell and convey to the Chicago, Rock Island and Pacific Railway Company all the railway property, rights, franchises, and privileges of the Choctaw, Oklahoma and Gulf Railroad Company, and for other purposes," approved March 3, 1905.

DISBURSING OFFICERS' CHECKS.

Mr. ALDRICH. I am directed by the Committee on Finance, to whom was referred the bill (S. 5811) to amend section 3646 of the Revised Statutes of the United States, as amended by act of February 16, 1885, as amended by act of March 23, 1906, to report it favorably without amendment. The bill is to correct an error in a bill which passed both Houses a few days since and became a law. It is sent here from the Treasury Department. It is in regard to issuing duplicate checks in case of lost checks, and it is important that it should be passed immediately, in view of certain complications at the Treasury Department which have grown out of the passage of the former bill. I ask unanimous consent that it may be considered.

The Secretary read the bill; and, there being no objection, the Senate, as in Committee of the Whole, proceeded to its consideration. It proposes to amend section 3646, Revised Statutes of the United States, as amended by act of February 16, 1885, as amended by act of March 23, 1906, by striking out the words "check or warrant" wherever the words appear in the amended act, and by substituting in lieu thereof the words "disbursing officer's check."

The bill was reported to the Senate without amendment, ordered to be engrossed for a third reading, read the third time, and passed.

HOUSE BILL REFERRED.

H. R. 15334. An act to authorize the construction of dams and power stations on the Coosa River at Lock 2, Alabama, was read twice by its title, and referred to the Committee on Commerce.

THANKS OF CONGRESS TO GEN. HORACE PORTER.

H. J. Res. 149. Joint resolution extending the thanks of Congress to Gen. Horace Porter was read the first time by its title.

Mr. LODGE. I ask for the present consideration of the joint resolution.

The VICE-PRESIDENT. The joint resolution will be read for the information of the Senate.

The joint resolution was read the second time at length, as follows:

Resolved, etc., That the thanks of the people of the United States are justly due and are hereby tendered to Gen. Horace Porter, late ambassador to France, for his disinterested and patriotic services in conducting, upon his own initiative and at his own expense, a series of researches and excavations extending over a period of six years and resulting in the recovery of the body of Admiral John Paul Jones from a forgotten grave in a foreign land and its return to the country which he had loved so well and so heroically served.

Resolved, That General Porter be requested to furnish Congress a copy of his remarks at the exercises at Annapolis, April 26, 1906, and that, when received, said remarks be printed in the RECORD.

Mr. ALDRICH. Does the joint resolution come from any committee?

Mr. LODGE. It has just come from the House. It is a resolution of thanks and passed the House without reference to a committee.

Mr. ALDRICH. I suggest that it be referred to the Committee on Foreign Relations.

Mr. LODGE. It does not seem to me worth while to be so particular when you are trying to be courteous. But still, if the Senator insists——

Mr. BACON. I hope the Senator from Rhode Island will not insist on a reference. Much of the value of this measure as a compliment depends upon the cordiality and freedom from anything like hesitation with which it is extended. I am sure there will not be a Senator on that committee or in this Chamber who would not cordially give his support to the joint resolution.

Mr. ALDRICH. I am not objecting to it or suggesting the reference with an idea of being discourteous to General Porter.

Mr. BACON. Not at all. I have not suggested that.

Mr. ALDRICH. But we are establishing what seems to me is rather a dangerous precedent. If every man who does a good thing for the country in a diplomatic capacity is to receive the thanks of Congress, I would say that it might become quite an abuse. If that is to be the custom to be established here, I should regret it very much. I say that very frankly.

Mr. BACON. We should all agree to that.

Mr. ALDRICH. The thanks of Congress have been extended in the past to great generals and to great admirals, so that it has been really a distinction worth having.

Mr. LODGE. The thanks of Congress have also been extended to great inventors.

Mr. ALDRICH. Yes; to great inventors in one or two cases long ago. If we are to recognize every duty performed in a manly way by every officer of the United States in a diplomatic capacity by extending to him the thanks of Congress, and if it is to be thought ungenerous or discourteous to suggest that resolutions for that purpose be referred to a committee, then I think I shall have to assume the position of being discourteous about it, because I think it would be establishing a very dangerous precedent, which we ought not to establish.

Mr. BACON. Mr. President, there has been no suggestion of discourtesy.

Mr. ALDRICH. Such action simply cheapens the thanks of Congress to the extent to which I am unwilling to go.

Mr. BACON. Mr. President, I do not think that extending the thanks of Congress in this instance would in any degree cheapen that recognition of worthy conduct. The Senator from Rhode Island, I think, need be under no such apprehension. There has been nothing in the past to indicate any disposition on the part of Congress to extend this very high compliment to any except those who most richly merit it.

I am surprised that there should be a suggestion that this service is of such an ordinary character that to extend this recognition to it would cheapen that compliment when such recognition shall hereafter be bestowed upon others. It is not correct, Mr. President, to state that this is simply a duty performed by an ambassador. This was entirely outside of his ambassadorial functions or outside of any duty devolved upon him as an ambassador. It was a duty undertaken by him, it is true, when he had the advantage of official position, which gave him opportunities a private citizen might not have enjoyed; but it is none the less to his credit that, moved by the highest impulse of patriotism, he undertook this most worthy work and persevered in it under circumstances which would have discouraged almost any other man; that he not only did so through a period of years, but that he did it at his own expense, and absolutely, when there was an offer to return him the money, he declined to receive it. This most valuable result, one which appeals to the patriotism of every man and every woman and every child in the land, is one which richly merits recognition on the part of Congress.

The only suggestion I made to the Senator was, not that there was any discourtesy, but that, in a matter which must, I presume, command the support of every Senator, it was something of value that the compliment be extended in a way that there should not be attached to it the slightest manifestation of hesitation on the part of the Senate of the United States.

I seriously regret that the Senator from Rhode Island takes the view of it that he does, because it would be to me personally and as a Senator a most gratifying thing that I could join in this expression of very high appreciation on the part of the American Republic of this most notable performance by this most worthy representative of the Government at the court of France.

The VICE-PRESIDENT. Is there objection to the present consideration of the joint resolution which has been read?

Mr. CULLOM. Allow me to say a word, Mr. President.

I do not understand whether the Senator from Rhode Island [Mr. ALDRICH] has withdrawn his motion to refer.

Mr. ALDRICH. I have not yet done so.

Mr. CULLOM. I hope the Senator will do so. If he does not, however, I desire that the joint resolution shall be referred without any long discussion in reference to it. It seems to me it would be much better to either pass the joint resolution without discussion or to refer it, and let it be reported back in some shape by the committee. Either one of those two things should be done without delay.

Mr. LODGE. Mr. President, when I made the request for unanimous consent, I confess it never occurred to me that it was a matter as to which there would be the slightest objection. I wish to say one word in explanation.

The joint resolution was introduced in the House of Representatives and passed there without reference to a committee, as I understand. It came over to us in that way, without going through the usual form. The service General Porter performed was not an official service. It was entirely apart from that; it was a personal service. It seems to me if Congress is going to extend the compliment of thanks—and the thanks of Congress are a very high compliment indeed—this is the only manner in which we can recognize what General Porter has done. It only seemed to me that if we were going to do it and wanted to do it, we should do it in the most generous and gracious manner possible. I had no thought that anybody would make the slightest objection, or I should not have made the request. To have discussion over it seems to me very unfortunate.

Mr. TELLER. Mr. President, I myself do not think that there is any impropriety in referring the joint resolution to a committee. I do not think such a reference would in the slightest degree detract from the importance and the value of the compliment. There have been very few men in the history of this country who have had such an honor conferred upon them; and if it is done with deliberation, as it will be if the joint resolution goes to a committee and is reported to the Senate, it certainly can not detract from the value of our action.

I think, as a matter of propriety, all resolutions of this character should go to a committee. I can understand very readily that in times of excitement a resolution of this kind might be introduced and passed through one body or the other, without there being proper ground for it. Of course this is a case in which there is not any controversy; and, therefore, I think it affords a good opportunity for us to establish a rule, and to stand by it in the future, that we will not confer such an honor upon anybody in a mere perfunctory manner or in haste. I think no Senator should object to the joint resolution going to a committee, and the committee then reporting it in proper form.

Mr. LODGE. Mr. President, of course one objection carries the joint resolution to a committee; but I withdraw the request for unanimous consent, and regret extremely that discussion should have taken place upon it.

The VICE-PRESIDENT. The joint resolution will be referred to the Committee on Foreign Relations.

CONGRESSIONAL AID FOR CALIFORNIA SUFFERERS.

Mr. TILLMAN. Mr. President——

Mr. GALLINGER. I ask the Senator from South Carolina to yield to me for a moment.

The VICE-PRESIDENT. Does the Senator from South Carolina yield to the Senator from New Hampshire?

Mr. TILLMAN. I do.

Mr. GALLINGER. Mr. President, at a meeting of the Committee on Appropriations a few days ago, the Senator from South Carolina [Mr. TILLMAN] called attention to the fact that in certain newspapers in the country it had been stated that of the $2,500,000 appropriated by Congress for the relief of the people of San Francisco, only $300,000 was available. It occurred to me at the time that the people would understand the matter and that there would be no danger of an impression getting into the minds of the public that the money appropriated so generously by Congress had not been properly expended. Since that time I have noticed in two of the great newspapers of New England, as well as in some newspapers published in other parts of the country, large headlines repeating the statement that only $300,000 of the two million and a half was available for the relief of the people of that stricken city.

Mr. President, we all know that every dollar of that money has been or will be properly expended; but for the purpose of correcting what I think is an impression that has gained credence to a very considerable extent in the country, I should like to have the distinguished chairman of the Committee on Appropriations [Mr. ALLISON] state to the Senate and the country precisely what disposition has been made of that money.

Mr. ALLISON. Mr. President, by the terms of the joint resolutions the two appropriations made by Congress for the benefit of the sufferers at San Francisco were to be expended by the Secretary of War. It is well known to Senators that when this great calamity occurred the Secretary of War immediately, without legislation, proceeded to transfer to San Francisco all the available means of the War Department, including quartermaster stores, tents, bedding, blankets, and everything that was available within five hundred or a thousand miles of San Francisco. He took that responsibility, believing that Congress would reimburse the War Department for that expenditure. Within a day or two the joint resolution appropriating $1,000,000 passed; but at the time of the passage of that joint resolution the War Department had already forwarded commissary, quartermaster, medical stores, etc., in excess of the appropriation, amounting, I believe, to $1,200,000 or perhaps $1,300,000. I have not the details before me. So another million and a half dollars was asked for a like purpose. That amount was promptly appropriated by Congress.

This calamity occurred in the very last quarter of the fiscal year, when the appropriations for medical and commissary stores, transportation, etc., are nearly all expended. Therefore it became necessary for the maintenance of our Army that these expenditures made for the supplies and stores of the Army should be refunded, so that the second appropriation, providing that the expenditures already made and to be incurred should be reimbursed to the funds of the Quartermaster, Commissary, and Medical Corps of the Army. That evidently meant that the two and a half million dollars were to be expended for the benefit of the stricken people of San Francisco. But when that money was expended out of stores already in existence, pro tanto those stores were to be returned, in order that the Army itself might be enabled to live between now and the 1st of July. I understand there is now left about a half million dollars of those funds.

There ought not to be any doubt in the country on this subject, and I hope there will not be, as I am quite sure, if further money is needed, it will be promptly appropriated by Congress.

Mr. TILLMAN. Before the Senator takes his seat, I wish to say that I am glad that this explanation has been made, because the Senator will recall the fact that I directed attention to it in the Committee on Appropriations yesterday, when I suggested that the country did not understand it and that some explanation ought to be made regarding it. I have been told, and the Senator has just told the Senate, that this two and a half million dollars has been mainly used to replace the supplies which the War Department of its own volition and on its own motion had already forwarded to San Francisco before Congress made the appropriation and that, therefore, in buying the Government supplies to replace those which had been sent to San Francisco they had to take this money.

I should like to ask the Senator now if his information from the War Department is to the effect that any of this money will go for tents or things like that? For instance, I presume that this Government is ready to loan, or to give, if need be, tents to the sufferers of one kind and another from Mississippi floods, etc., its supplies of that kind free of cost, and I want to know of the Senator whether any of this money will be used to buy back for the Government the tents which have been sent to San Francisco for temporary use by the people there?

Mr. ALLISON. Mr. President, as respects the special article of tents, I have not any information as to what particular disposition has been made of them.

Mr. GALLINGER. They will probably be returned.

Mr. ALLISON. Yes; eventually they will probably be returned, though perhaps they will not be returned for some time.

Mr. TILLMAN. I was not speaking about the return. I was speaking of whether any of the money will be used to purchase new tents to supply the deficit created by the lending of those tents.

Mr. ALLISON. I say again I can not answer that question; but that is mere leather and prunella, aside from the great expenditures that have been made. The tents will cost $100,000 or $150,000.

Mr. TILLMAN. I was just going to remark——

Mr. ALLISON. I want to say to the Senator, although I am sure he knows it himself, that every dollar of this money will be accounted for in detail as respects——

Mr. TILLMAN. I have not the slightest idea to the contrary.

Mr. ALLISON. As respects the expenditures and also the disbursements.

Mr. TILLMAN. I have never had any suspicion to the contrary. I was merely trying to have an explanation made to the country as to why there was an apparent misappropriation or misuse of this money.

Mr. ALLISON. It ought to be said that the city of San Francisco and the surrounding towns will receive directly and indirectly every dollar of this expenditure. It is an absolute gift in this calamity to the stricken people who have suffered such great loss. The War Department will be reimbursed, so far as practicable, from the stores which they have taken there and which are already in use or will soon be in process of use.

Mr. TILLMAN. I was merely trying to make clear my own opinion that, if any of this money had been used to reimburse the War Department for tents and things of that character, we ought to instruct the officers of the Government to the contrary; and let them know that we want the sufferers to use our tents—at least I do—and, if necessary, to wear them out and never return them. Let us make it plain that we ought not to take the two and a half million dollars to replace the tents we have loaned.

Mr. PERKINS. I desire, Mr. President, to supplement what the chairman of the Committee on Appropriations [Mr. ALLISON] has said, and perhaps my explanation will satisfy my friend from South Carolina [Mr. TILLMAN]. Immediately after the wires had flashed the news across the continent of the great calamity that had befallen San Francisco and other cities in California, I placed myself in communication with the Secretary of War. Congress had then taken no action whatever in relation to the matter, neither House being then in session. The Secretary of War said, "Anything in my control, although not authorized by law to do so, shall be placed at the disposal of the distressed and homeless people of San Francisco." At that time my information was that 150,000 people were homeless, destitute, and without food.

I want to say in passing that the Secretary of War, the Commissary-General, the Quartermaster-General, the Military Secretary, and, indeed, all other officers of the Government in the War Department, as well as in the Navy and other Departments, vied with each other to do all they could to relieve the distress of those people. The Secretary of War remained in his office during the Sabbath day, giving his personal attention to matters of relief and directing, inditing, and dictating telegrams and other communications to the general in command in San Francisco and other officers of the Government.

I have, however, seen it stated in the newspapers referred to by the Senator from New Hampshire [Mr. GALLINGER] that part of the money appropriated by Congress has not been directed in the channels in which it was intended by Congress to go. Therefore this morning I placed myself in communication with Major-General Ainsworth, the Military Secretary, and, after consultation with the Secretary of War relative to the matter, the Secretary of War decided to send a communication to the chairman of the relief committee in San Francisco, ex-Mayor James D. Phelan. I have a copy of that dispatch, Mr. President, and I will ask the permission of the Senate that the Secretary may read it. It explains the full situation and the status of the appropriations made by Congress for the relief of the people of California.

I merely wish to add that the magnificent generosity not only of Congress, but of the people throughout our country, has excited the admiration and gratitude of the people of California, as well as of others who have an interest in and love for their fellow-beings.

I now ask that the Secretary read the communication of the Secretary of War. I think it will explain the situation fully and to the satisfaction of my friend from South Carolina.

The VICE-PRESIDENT. In the absence of objection, the Secretary will read as requested.

The Secretary read as follows:

[Telegram.]

WASHINGTON, D. C., *May 1, 1906.*

JAMES D. PHELAN,
Chairman of Relief Committee and Red Cross, San Francisco:

You and your committee evidently misconceive the nature and legal limitations of the Congressional aid and do not understand the facts. Instantly on receipt of General Funston's telegram of the extent of the disaster and the pressing need of food and shelter for more than 100,000 people, although I was without lawful authority to do so, I ordered sent to San Francisco rations costing $200,000; tentage, blankets, cots, and bedding costing more than a million dollars, and medical stores costing $150,000 to be used and distributed for the relief of the sufferers.

The transportation of these supplies cost more than $150,000. I made this order anticipating that Congress would ratify my action. Congress did so by joint resolution authorizing me to furnish subsistence, quartermaster, and medical stores for relief of the sufferers and appropriated a million dollars for these purposes to be used in my discretion. The President then advised Congress that expenses had already been incurred for these purposes aggregating one million and a half of dollars and recommended the appropriation of one million and a half more, or two millions and a half in all. Congress thereupon increased the appropriation to two millions and a half in all and authorized me to use this amount not only for subsistence, quartermaster, and medical stores, but also for the transportation of troops. On the recommendation of General Greely and Mayor Schmitz I ordered twenty-five hundred more troops to San Francisco, which, with previous transportation for same purpose, involves an expense of $250,000. There is left available of the appropriation, therefore, not to exceed $700,000, which under the law can only be expended for rations, quartermaster and medical supplies, and transportation of troops, and which can only be expended through the lawful agents of the War Department, to wit, the bonded officers of the subsistence, quartermaster, and medical bureaus under my direction. I have no power or legal authority to turn over the money appropriated by Congress to your committee to be expended by you or to expend it for any but the specific purposes stated in the Congressional resolutions. Should you think that the supply of rations or quartermaster stores or medical supplies ought to be increased, I shall be glad to direct the purchase and forwarding of them to the proper Army officers in San Francisco for distribution, but I can not order the payment of money out of the Treasury of the United States to your committee for any purpose. My discretion is to be exercised only as to the amounts to be expended for the specific purposes mentioned in the Congressional resolutions and is thus limited by law. As president of the Red Cross Society, I have already directed the remittance to you by telegram of $300,000 out of the funds of that society and am prepared to order the remittance of more as you shall need it.

It will aid us in taking proper action if you will advise me of the amount of money you have on hand and in general the purposes for

which you need more. I infer from your telegrams that you now have on hand food supplies, tentage, blankets, and clothing enough for present needs.

WM. H. TAFT.
Secretary of War and President of Red Cross.

REGULATION OF RAILROAD RATES.

Mr. GALLINGER. Regular order, Mr. President.

Mr. TILLMAN. I ask that the unfinished business be laid before the Senate.

The Senate, as in Committee of the Whole, resumed the consideration of the bill (H. R. 12987) to amend an act entitled "An act to regulate commerce," approved February 4, 1887, and all acts amendatory thereof, and to enlarge the powers of the Interstate Commerce Commission.

Mr. LODGE. Will the Senator from South Carolina allow me to make a request?

Mr. TILLMAN. Certainly.

Mr. LODGE. I ask that an additional print may be had of all the amendments offered to the railroad rate bill. There are not enough to make the sets that were ordered this morning for the use of the Senate.

The VICE-PRESIDENT. The Senator from Massachusetts asks that additional copies of the amendments pending to the railroad rate bill be printed. Is there objection? The Chair hears none, and that order is made.

Mr. DANIEL. Mr. President, the Senate confronts the greatest economic problem of this age, and, I may add, of any age. As the railroad system of the United States is the mightiest framework of commercial organization that the world has ever known, so it presents problems more diverse, more interesting, and more practical than ever have before challenged the mind of man. More complex and not less important than the tariff, these problems exact patience and conjure the highest faculties of research and understanding. However simple they may seem to the casual onlooker or auditor, to those who have studied them they grow in reach and width and depth and complication with every progressive step of inquiry, and the honest mind that seeks to compass them must be profoundly impressed, if not overweighed, by the limitations of knowledge and by the perplexities of irregular conditions and countervailing influences—geographical, financial, social, political, juridical, and economic.

A NEW PROBLEM.

This problem is unlike either the currency or the tariff, in the fact that it is a new problem. The currency and the tariff are old customers. Like the poor, they have been with us, and they will be with us always. This is a new face at the Congressional door, a young stranger, I may say, knocking for admission, and surely coming in, whether one political party or another says "not in" to the knocker. It is a child of the nineteenth century, and it is one of its rapid and gigantic growths. No one could or did forecast the destiny of this child when it was born and lay in its crude cradle. No one discerned the signs of royalty on its infantile brow. We know now that it was an infant Hercules; Hercules has grown to full statue and wields a club as big as many big sticks, pitchforks, and muck rakes bound together like the Roman fasces. Hercules is rich, too, and of near kin to Midas; so rich that in comparison Crœsus and Monte Cristo are faded specters and Plutus has his rival.

Transportation between the States and foreign nations and the regulation thereof—that is the broad significance of this problem.

It divides itself naturally into the discussion of law and the discussion of facts. We must consider the law first, and must then seek to apply and adjust it to the facts, for here, so to speak, we are in a sense judges and also jurors, and must determine both the law and the facts in so far as they enter into our consideration.

THE SCIENCE OF MOVEMENT.

This problem of transportation is a fundamental problem of the human race. Edward Atkinson has an expression on this subject that arrested my attention when I first saw it. It is a sententious utterance: "Man can create nothing; he can only move something." Out of this window of thought flashes a great light. Man can not even create so much as a mote that floats in the air. His mission is movement—movement of himself, movement of others, movement of thought, and movement of things of matter which do unto him pertain.

Things of the vegetable creation can not move themselves. A tree stays where it takes root, and there may remain while generations and centuries pass by. The grass withereth where it springs in fixed localities; but the winds bear the seeds of the tree and the plant hither and thither as they listeth, and fruits grow where the autonomy of natural forces plants them.

Animated creatures were created to move themselves, some over the earth, some in the waters under the earth, some in the air above the earth. But man, by the contrivances of nature and of his creative genius, moves everywhere, over land and over sea, and he penetrates even the kingdom of the air with his tentative designs and contemplations, which give omen and partial assurance of his yet undeveloped powers and foretoken his achievements in regions just dawning within the range of his ambitious thought.

THE SHIP AND THE ROAD.

Man not only moves his own body by the exercise of its limbs, but also by the subjection of the creatures of the land to his uses. The camel, the ox, the horse, the ass bear him and his burdens as he ordains. Turning the woods of the forest into the implements of convenience, he makes the ocean, the lake, the river the common highway of his movements, and turning them, too, into appliances for the land, he hardens those appliances with metal taken from the mines and wheels over its surface. To his vehicle he sometimes attaches his fellows, sometimes a four-footed captive of the animal kingdom, and whatever force he collects he appropriates to his own use and purposes.

The ship and the road—these have been the greatest of all the instrumentalities of man for the convenience and development of his own movements. The great nations have been those who recognize and who perfect the utility of their uses. Behold a nation that has ships in plenty and good roads, and you will behold a nation that has seized time by the forelock and taken methods of advancement by the right handle. It is the science of movement that we are to consider in our interstate relations, and the time is ripe for action.

DELAY IN DEALING WITH THE SUBJECT.

Prof. Arthur T. Hadley, instructor in political economy at Yale and commissioner of labor statistics of Connecticut, is a man of learning and of weight. No one who has read his book on railroad transportation is likely to attribute to him the disposition of the iconoclast. I commend the things which he says which go to explain why Congress did not earlier take up this subject.

In 1860 a storm burst in this country, a storm that had collected through many centuries, and lay at the deep root of long conditions of human affairs. At that time an American citizen eligible to the Senate—that is, 30 years old—was just about the age of our then railroad system, for on the Fourth of July, 1828, Charles Carroll of Carrollton laid the first rail of the Baltimore and Ohio Railroad. He was the last signer of the Declaration of Independence, and his passing from the scene in the third decade of the nineteenth century marked the beginning of the new era of transportation. But while this new era was dawning, clouds were also gathering over the people of this country. Their thoughts were so surcharged with present things that their concentration on things economical was in a degree diverted. But the earlier railroad movements of this country, Mr. President, were initiated by the States and not by the Federal Government, and it is natural that the States should have matured systems of public control earlier than the Federal Government has done so. Now, the railroad system has grown and overspread the country ere we have undertaken in any comprehensive way to regulate it.

A NATIONAL AND WORLD-WIDE PROBLEM.

This question has important local aspects; but it is not a local, but a wide, embracing subject in the phases which it presents to us, although it involves the fortunes of many localities and of many persons. It is not a State problem in the immediate view of this bill, though the fact underlies it that the States compose the nation, and that they possess connecting problems of their own which come to a focus in the central national power. It is preeminently, however, a national problem—one that concerns the whole people of the United States, both in the aggregate and in the severalties of their communal and individual parts.

But more than this, it is not only as broad as the country; it stretches beyond the ocean, through the necessities, through the vehicles, through the contacts, through the exchanges, the reciprocities and the affinities of trade and commerce, and its lines in verity run out to the uttermost parts of the earth.

Antedating the railroad system of the world lie six thousand years of history and the countless ages of prehistoric times. Before the steam engine was invented and before the iron rail was laid, civilization had overspread the earth in the older continents and had appeared and made wonderful advancement in our own country. Great cities had been builded. Immense ports and harbors had been constructed. Ships had circumnavigated the globe, and nations had risen and fallen. Peoples and languages had come and gone, and great masses of capital in

money and other properties had been invested in many of the perfected works and establishments of man.

DISTURBING AND IMPEDING ELEMENTS IN THE PROBLEMS PRESENTED.

When a new system was thus interjected into and made to overlay an old one, it is obvious that disturbing factors would immediately present themselves to the harmony and to the equitable conduct of it according to idealistic views. I will point out briefly ere I discuss the question some of these disturbing factors which reveal themselves as soon as one undertakes to solve any of the given problems which are presented to us, any one of which it would take a master mind to discuss thoroughly, and a long essay to explain to other minds.

Some of these disturbing factors may in some degree be of a permanent nature. They are certainly of an existent nature. They must be noted and they must be weighed by every fair mind that seeks to understand the causations of rates which do not take the distance traversed in the transportation of passengers and freight as a standard of the principle of price for carriage. Some of them are these: First, the distant and established markets of foreign nations—Liverpool, for instance. Unless the wheat of the Northwest and other surplus farm products of our country can reach and have a competitive part in the Liverpool market, a great amount of our own trade would be curtailed and immense material crowded back upon us. This has led to discriminating practices with respect to our foreign commerce which at the first blush strike the mind as exceedingly unjust and which may need the processes of correction. The result, however, of this condition is a substantial fact existing in the nature of civilization. So it has come to pass that less rates are charged to-day for delivery of wheat in the Liverpool market than for its delivery in the city of New York.

Then, again, Mr. President, the seas and the oceans which connect us with all foreign nations, from our western and from our eastern shores, are in themselves the causation of great currents of traffic and travel, and then these waterways constitute in themselves a free road connecting all the seashore nations. Another disturbing factor is found in our own rivers, lakes, and canals, the internal navigable waters of our own country. We have developed these waters by immense appropriations. We have shaped, constructed, or improved their channels for the convenience of our own people, and the result is that oftentimes a longer route between two points furnishes cheaper transportation by a water course than shorter routes by rail, and railroads are put under conditions which it is difficult for the most philosophic and the most equitable mind to treat with justice and with due regard to all the conflicting interests which are involved.

So, Mr. President, the seaports and the harbors of this country and the seaports and the harbors of other countries which are at varied distances from the initial point of transportation or to the terminal points are in themselves diverting and sometimes most imperious causes of great systems of traffic and differentials in rates.

Look at the great American seaports—Boston, Baltimore, New York, Philadelphia, Norfolk, Newport News, Wilmington, Savannah, Charleston, New Orleans, Tampa, Galveston. How much money have the whole people of the United States expended upon them? How have the light-houses risen at popular cost to guide the mariner? How have the harbors been dredged and dug out? How have all the improvements of art and constructive genius been applied to them?

Moreover, Mr. President, a harbor is like a mountain pass. Nature originated it, and a harbor is in a certain sense a general and a pervasive public possession and convenience.

Then again, Mr. President, comes the competitive force of rival railroad lines at varied distances from important initial and terminal points, introducing the perplexities and the variants of active and constant competition.

Then, Mr. President, arise practices which have grown in a measure out of irregular conditions—the grouping of a number of cities and of large sections within prescribed distances from initial or terminal points on one basis of charge for travel or traffic. This is what railroad men call the "basic system."

Then, Mr. President, man is a gregarious animal. It has been the habit of the human race since they commenced their journey through this world to collect together in tribes, societies, and organizations of all kinds, to build habitations and cities by systems, sometimes demanded by necessities of defense. Out of the social nature of man have grown great centers of manufacturing, of mining, or agricultural produce, of education, of art, and great emporiums of commerce which supply enormous bulks of traffic that can and do obtain carriage at wholesale rates, while retail rates are charged communities which supply less material for carriage.

I have not time, in the space that I shall endeavor to occupy the attention of the Senate, to discuss fully the nature of any of these variant and diversified causations that are constant qualities in determining the rates of traffic. I have suggested them, to begin with, that I may bring to the realization of the minds of those who have not pondered how complex, how intricate, how irregular these problems are, and how impossible in the nature of the case it is for the wit or the wisdom of man to provide at this stage of our railroad and social development any perfected code which will reach all evils or will harmonize the whole system in accordance with any perfected theory of human action.

LEADING QUESTIONS.

I shall now turn, Mr. President, to discuss a few of the practical questions which are before us. Has the Congress of the United States been invested by the Constitution with power to regulate passenger and freight charges in transportation from State to State?

Does the power to regulate passenger and freight charges include the power in Congress to fix the identical rate at which a passenger or a certain weight of freight may be carried from State to State?

Does the power of Congress include the right to fix passenger and freight rates from any station or any place in one State to any other station in another State, or is it confined to fixing the rates of carriage simply across a State line?

Has Congress the power to declare the principles upon which rates shall be fixed, and then by statute to enforce compliance with such principles on the part of the transportation companies which conduct the transportation?

Can Congress authorize a commission to ascertain and fix reasonable and just rates for the carriage of passengers and freight from State to State in compliance with the principles which it has defined by law?

Can Congress authorize a commission to enforce compliance or through the courts to seek compliance by transportation companies with the rates fixed by the Commission in accordance with the principles which it has declared by law?

To each and every one of these questions my mind readily yields an affirmative response, and to my reading the position which those answers assume is abundantly sustained by the decisions of both the State and Federal courts of this country, and by consensus of opinion on the part of the great majority of lawyers and publicists who have studied them. Indeed, Mr. President, the affirmation of these doctrines is so intrenched in American jurisprudence by the concurrence of judicial and scholarly minds and by popular acceptation that persistence in disputing any of them seems rather to flow from the egotism, from the pride, or from the enthusiasm of individual opinion or from inflamed passion of interested motive than from any fairly grounded hope or expectation that they will ever be reversed.

It is highly important, however, that the public mind be rightly informed on this subject, that it should understand the juridical status of these questions, and that our own minds should contemplate the situation from the status in which judicial decision has placed it, whether that status be one altogether pleasing to us or no. These are the reasons that actuate me in reviewing some of the ground which has already been so well occupied by others, whose profound researches and whose enlightening expositions have made this debate memorable for its display of intellectual faculties and of legal lore.

FAIR CONSTRUCTION OF THE CONSTITUTION, RATHER THAN REFINED AND METAPHYSICAL REASONING.

Certain other questions besides these are in the public mind and have become practical here. But for the present I will pass them by to discuss those which are fundamental.

Chief Justice Marshall uttered these words in the great case of Gibbons *v.* Ogden, which was decided in 1824. That case fills 240 pages of the ninth volume of Wheaton's Reports, and it seems applicable to the strenuous refinings and contractions of Congressional power which I have heard here and there in the debate made upon this floor. He said:

> Powerful and ingenious minds, taking, as postulates, that the powers expressly granted to the Government of the Union are to be contracted by construction into the narrowest possible compass and that the original powers of the States are retained, if any possible construction will retain them, may, by a course of well-digested but refined and metaphysical reasoning, founded on these premises, explain away the Constitution of our country and leave it a magnificent structure indeed to look at, but totally unfit for use.
>
> They may so entangle and perplex the understanding as to obscure principles which were before thought quite plain and induce doubts where, if the mind were to pursue its own course, none would be perceived. In such a case it is peculiarly necessary to recur to safe and fundamental principles to sustain those principles, and, when sustained, to make them the tests of the arguments to be examined. (Gibbons *v.* Ogden, 9 Wheat., 222; A. D. 1824.)

THE CONGRESSIONAL POWER TO REGULATE COMMERCE IS SPECIFIC, COMPLETE, AND COMPREHENSIVE.

Indeed, Mr. President, when we take up the Constitution, these refinements and perplexities which infest a few minds disappear before a fair and natural construction of the language employed, especially when considered with reference to the history of States and Territories. The power of Congress to regulate commerce was not conferred in any meager fashion by the Constitution of the United States. "Regulate" is a word of sovereignty; it is an imperial, a kingly word, as comprehensive as "sovereignty." It was uttered by the voice of the whole people of the United States, and it is as comprehensive as either sovereignty over the land which we inhabit and over every person and everything which pertain thereto. "God said Let there be light; and there was light." This phrase is a little briefer than that in which the people have conferred their sovereign powers upon Congress; but there is nothing meager in the one phrase more than in the other. The one applies to that creative power above us all which made that light, which he who has eyes to see let him see. The other applies to that creative and necessary power of human government which, originating in the sovereign people, was transferred by them to Congress as their servants. To these servants the people gave all of their sovereign power to regulate all of their concerns of commerce among the States. And what is "regulate?" It is "to prescribe the rule by which commerce is to be governed." "This power, like all others vested in Congress, is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations other than prescribed in the Constitution." So says Chief Justice Marshall in Gibbons *v.* Ogden (9 Wheaton, 196).

It is a dangerous power indeed. All power is dangerous, for all power may be abused. Nevertheless, it must exist, and it does exist, and it is for us, as we may, to use it wisely, in so far as it has been committed to our hands for use. It is a sweeping and it is an all-comprehending power. Necessity and propriety are its only limitations; for Congress is given power also "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers"—that is, those that had been enumerated. (Art. I, sec. 8.)

In ascertaining the sense in which the word "necessary" is used in this clause of the Constitution, we look also to that with which it is associated. The only possible fact it has to qualify its strict and rigorous meaning and to present to the mind an idea of some choice of means of legislation is straightened and compressed within the narrow limits of dire necessity.

So arguing, the Supreme Court held that so the end be legitimate and within the scope of the Constitution, and all means which are appropriate which are plainly adapted to that end, which are not prohibited and which consist with the letter and spirit of the Constitution, are constitutional.

The Supreme Court says also, Judge Brewer giving the opinion, in South Carolina *v.* U. S., 199 U. S., 448.

The Constitution is a written instrument. As such its meaning does not alter. That which it meant when adopted it means now. Being a grant of powers to a government, its language is general, and as changes come in social and political life, it embraces in its grasp all new conditions which are within the scope of the powers in terms conferred. In other words, while the powers granted do not change, they apply from generation to generation to all things to which they are in their nature applicable. This in no manner abridges the fact of its changeless nature and meaning. Those things which are within its grants of power, as those were understood when made, are still within them, and those things not within them remain still excluded.

Yea, Mr. President, the Constitution in its outlook is like the camera obscura, which has its face always turned toward the front. Constitutions were made solely for the future. If they did not have a forward look, they would be meaningless and vain. Although the thing that the Constitution deals with may not have existed in being, or even in the imagination of man, the moment it comes within the purview of the power extended it enters into and is grasped by the Constitution, exactly like an image which passes before the glass and is reflected on the camera.

ALL NATIONS AND STATES EXERCISE POWER TO REGULATE COMMERCE AND FIX RATES.

There is no nation of this earth to-day, Mr. President, which has any part in the civilization of mankind, certainly none of the advanced nations, that does not assume and exercise the power to regulate railroad traffic and to fix rates. Out of all the forty-five States that compose the American Union there has not been a State which has denied that it possessed this power within the range of its own jurisdiction.

If it were true, as has been eagerly suggested here, that the people of the United States have withheld from Congress the power to fix rates and the power to employ the natural and appropriate administrative agencies to assist them in that work, this would, indeed, be the oddest nation that ever happened in all the tide of time.

It would also be the most impotent nation in its intimate and most important concerns that ever asserted for itself the attributes of sovereignty or that ever flew a flag on land or sea. It would stand forth the most prodigious monument of oddity and helplessness that the wondering world has ever known.

If it be true, Mr. President, that the Constitution of the United States did not intend in conferring power "to regulate commerce with foreign nations, and among the several States, and with the Indian tribes," to convey complete and all-embracing power in that sentence, it would seem that those who have been called the "sages of the Revolution" were ignorant persons who little understood the meaning of the words they were using, and that our people have been under delusion in regarding them as wise and far-seeing men.

If it be true that Congress can not fix the principles and confer on executive bodies or commissions the details of examining rate questions and of ascertaining the figures which conform the rates to the principles declared, such doctrine would paralyze government by imposing upon Congress an impossible task and nullifying practical, expedient, natural, and convenient methods by which alone Congressional powers of this description can be properly and fitly exercised.

It is well-nigh inconceivable to my mind that any other mind that is reasonably conversant with human concerns, and that is reasonably fair and righteous in reaching its conclusion, could for a moment dwell upon such nullifying doctrines without perceiving that they are weird, eccentric, destructive, and indeed impossible.

CONGRESSIONAL POWER MUST BE CONFERRED IN MANY CASES ON SUBORDINATE AUTHORITIES.

This Government has been, and now is, and the more and more must be, as populations increase, in the habit of transferring to subordinate authorities and to executive bodies the vast details of its administration, whether that administration refers to the fulfillment of either legislative, executive, or judicial powers.

Congress itself could not accomplish its work unless the executive agents of the two Houses were empowered to buy and sell, to print, to travel, and to do the myriad essential things in execution of the powers of each House or of the Congress which they compose.

Every Cabinet minister and his subordinates must of necessity hear and determine a vast variety of questions which pertain to administration. Our public lands could not be handled. Our rivers and harbors could not be improved for navigation. Our courts could not have commissioners in chancery or receivers. Our armies and navies could neither be organized, clothed, armed, fed, or moved. Our customs and tariff laws would be burdened with dead letters. Our immigration laws and quarantines would be like the Pope's bull against the comet. The Interior and Agricultural Departments would be aliunde. The Pension Bureau would become a nonentity. In short, such a doctrine, generally applied, would be as if the ice age had come again, and the glaciers had taken the place of cities, orchards, and fields, where civilization had been, but was not.

The Congressional power to regulate commerce among the States is "exclusive" as well as complete.

Not only, Mr. President, is this power to regulate commerce all embracing—"complete" and "entire," as the courts express it—it is an exclusive power. No other agency in the United States but Congress and those whom it appoints to administer it can exercise it. The power of the State ends at its boundary line. The power of the United States only ends where the oceans have circumscribed the range of its steam and its sail vessels and where its own immense boundaries meet those of foreign nations.

The Constitution of the United States having given to Congress the power to regulate commerce, not only with foreign nations, but among the several States, that subject is necessarily exclusive whenever the subjects of it are national in their character or admit only of one uniform system or plan of regulation.

So said the Supreme Court, through Judge Bradley, in Robbins *v.* Shelby County Taxing District (120 U. S., 489–492); and so it repeated, through Judge Brewer, in Atlantic Telegraph Co. *v.* Philadelphia (190 U. S., 162, 1902).

Out of this power of Congress, Mr. President, rises all the subordinate and fitting powers which are necessary to consummate and to accomplish it. To regulate commerce carries with it the power to build and maintain light-houses, piers, and breakwaters; to employ revenue cutters; to cause surveys to be made of coasts, rivers, and harbors; to appoint all necessary officers at home and abroad, to prescribe their duties, fix their terms of office and compensation; to define and punish all crimes relating to commerce within the sphere of the Constitution.

Any carriage of goods which crosses a State line is inter-

state commerce; and the fact that transportation from one State to another is accomplished, in whole or in part, through the agency of independent and unrelated carriers up to and from the State line does not affect the character of the transaction in this respect. For whenever an article destined to a place without the State is shipped or started therefor it becomes a subject of interstate commerce, and carriers employed in the transportation thereof, although neither of them may pass from one State to the other, are subjects, as instruments of such commerce, to national legislation and control.

A steamer plying between two points within a State is engaged in commerce between the States so far as she is employed in transporting goods destined for other States. (Daniel Ball (1870), 10 Wall., 557.)

When a part of the route of carriage is on a loop, outside of the State transportation on such route is interstate commerce and not within the power of the State.

Communication by telegraph and telephone is commerce if carried on between the different States, and lies as much within the power of Congressional regulation as the transportation of material things.

REGULATION OF COMMERCE WITH FOREIGN NATIONS, AMONG THE STATES, AND WITH INDIAN TRIBES.

Then, Mr. President, we come to the argument of analogy. The power to regulate commerce is specified in three respects—with foreign nations, among the States, and with Indian tribes. The courts have decided that these are commensurate powers, complete in themselves, exclusive in themselves, and equally comprehensive within themselves. They have also decided that those powers which the States may exercise within their domestic jurisdiction with respect to a regulation of freights and traffic the United States may exercise within the same region and to the same extent in interstate-commerce matters.

The power of Congress to regulate commerce among the States is sovereign, exclusive, and complete. Congress may legislate in respect thereto to the same extent, both as to the rates and all other matters of regulation, as a State may do in respect of purely local or internal commerce.

As to the conduct of commerce, the whole subject of the liability of interstate railroad companies for the negligence of those in their service, these may be covered by national legislation enacted by Congress under its power to regulate commerce between the States. (Peirce *v.* Van Duzer, 58 Fed., 700.)

The power of Congress on this subject is plenary. It may legislate as to the qualifications, duties, and liabilities of employees and others on railway trains engaged in that commerce; and such legislation will supersede any State action on the subject. But until such legislation is had it is clearly within the competency of the States to provide against accidents on trains whilst within their limits. (Nashville XC R. R. Co., 123 U. S., 99.)

"COMMERCE," NOT "ARTICLES OF COMMERCE" ONLY, WITHIN THE POWER.

It was argued by the able Senator from Ohio [Mr. FORAKER] that a rate is not an article of commerce, and therefore not to be fixed by Congress. The shortest and simplest answer to that is that the power is not one to regulate "articles of commerce," but to regulate "commerce." Mr. President, if you were to take the rate out of interstate commerce, I fancy that Hamlet would be completely out of the play. You might as well take the axle out of the wheel or the spoke out of the hub. The rate is the thing that moves all, the mainspring of commerce amongst the States; and it would be just as reasonable to say that you can not regulate the rate because it is not an article of commerce as to say, "There is my watch; fix it up; but leave out the mainspring, and take care that you do not regulate that." There is nothing that concerns commerce among the States as a part thereof, the machinery thereof, or the persons employed therein that is not within the complete and exclusive regulation of the Congress of the United States.

NEVER A SINGLE JUDGE HAS GIVEN OPINION THAT THE LEGISLATURES IN STATES OR THE CONGRESS CAN NOT FIX RATES.

Mr. President, there is one remarkable thing about this question. On the great questions of income tax and of currency and on nearly all the great questions which have agitated the public mind we have seen vacillating and divided courts. Up to date not a single judge of the United States, not a single judge of all the hundreds who have had this subject under advisement, either in the State or in the Federal tribunals, has ever yet said that Congress has no power to fix rates in interstate commerce. There is more unanimity upon this subject in the judicial mind of this country than there has ever existed upon any subject since our Constitution was founded and submitted for the interpretation of man.

THE FOUNDATIONS OF CONGRESSIONAL POWER.

I shall refer now to the foundations of this power. When we turn to the specific source of Congressional power over the regulation of commerce we find them in more than one clause of the Constitution. Indeed, there as no less than five provisions of our Constitution which should be considered in endeavoring to grasp this subject.

Article I, section 1, of the Constitution says:

(1) All legislative powers herein granted shall be vested in the Congress of the United States, which shall consist of a Senate and a House of Representatives.

There is a general grant of "all legislative powers." Then come specific enumerations:

(2) To regulate commerce with foreign nations, among the several States, and with the Indian tribes. (Art. I, sec. 8.)

* * * * * * *

(3) To establish post-offices and post-roads. (Art. I, sec. 8.)

(4) The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory and other property belonging to the United States. (Art. IV, sec. 3.)

That stretches over the District of Columbia and through the Territories, which are under the immediate jurisdiction of Congress.

(5) To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States and in any Department or officer thereof.

Is this not as wide, specific, and clear as lucid language can make it? It is all power, saving only in so far as some restriction may be placed upon it by other parts of the Constitution, as, for instance, that—

No preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another; nor shall vessels bound to or from one State be obliged to enter, clear, or pay duties in any other.

If there be any matter that belongs to commerce among the States, that matter is comprehended and embraced in that power.

How, Mr. President, can one at this stage of debate on this subject find provocation or comfort in challenging a power so universally recognized and just upon the stage of application? The inventive genius of man is strained to discover a trace of difficulty or doubt upon this subject. But a little comfort has been taken by a recent expression of Judge Harlan. In the course of his opinion in the Northern Securities case, 193 U. S., page 343, he used the following words:

Would it be said that Congress can meet such emergencies by prescribing rates by which interstate carriers shall be governed in the transportation of freight and passengers? If Congress has power to fix such rates, and upon that question we express no opinion, it does not choose to exercise its power in that way or about that question.

Judge Harlan in that case simply recognized a condition, that Congress was not regulating rates. He had no provocation to express a decisive question of the decisive subject, and any allusion was obiter dictum. But it does not follow that the judge has any doubt on this subject.

A corporation—

As he has said—

maintaining a public highway * * * must be held to have accepted its rights, privileges, and franchises subject to the condition of the government creating it, or the government within whose limits it conducts its business may by legislation protect the people against unreasonable charges for the services rendered by it.

In that same case, in which Judge Harlan thus passed by without opinion, Mr. Justice White said:

The plenary authority of Congress over interstate commerce, its right to regulate it to the fullest extent, to fix the rates to be charged for the movement of interstate commerce, to legislate concerning the ways and vehicles actually engaged in such traffic, and to exert any and every other power over such commerce which flows from the authority conferred by the Constitution, is thus conceded.

In the case of the Interstate Commerce Commission *v.* Cincinnati, etc., Railroad (167 U. S.), known generally as the "Maximum Rate case," Justice Brewer, giving the opinion of the Supreme Court, used these expressions:

There were three obvious and dissimilar courses open for consideration. Congress might itself prescribe the rates, or it might submit to some subordinate tribunal this duty, or it might leave with the companies the right to fix rates, subject to regulations and restrictions, as well as to that rule, which is as old as the existence of common carriers, to wit, that rates must be reasonable. * * * Administrative control over railroads through boards or commissions was no new thing. It had been resorted to in England and in many of the States of the Union.

Thus has the Supreme Court given the imprimatur of its utterance on this question.

NO CONTRACTION OF CONSTRUCTION JUSTIFIED BY THE HISTORY OF THE COMMERCE CLAUSE.

It has been said, Mr. President, that the history of the commerce clause of the Constitution of the United States is con-

ducive to narrow and contracted construction of its meaning. Let me read a little from Bancroft:

Of many causes promoting union, four above others exercised steady and commanding influence. The new Republic as one nation must have power to regulate its foreign commerce, to colonize its large domain, to provide an adequate revenue, and to establish justice in domestic trade by prohibiting the separate States from impairing the obligations of contracts. Each of these four causes was of vital importance; but the necessity for regulating commerce gave the immediate impulse to a more perfect Constitution. (Bancroft on the Constitution, 1st vol., 146.)

While these ends, Mr. President, were being discussed, and while the Americans were getting their minds together with a view to settling commercial questions, a British order in council was made in July, 1783, restricting to British subjects and ships the carrying of American produce from American ports to any British West India island and the carrying of the produce of those islands to any port in America.

This act of British imposition stung and aroused American spirit and drew together and impelled the States together to resist the common adversary.

VIRGINIA MARSHALS THE UNITED STATES ON THEIR WAY TO A BETTER UNION.

At the same time, while we were turning the face of the coming nation toward the East, there were those who were also looking toward the West.

The complete cession of the Northwest and the grant of the desired impost were the offerings of Virginia to the general welfare. Simultaneously, her legislature, in December, took cognizance of the aggression on equal commerce. The Virginians owned not much shipping and had no special interest in the West India trade, but the British prohibitory policy offended their pride and their sense of honor, and, as in the war they looked upon "union as the rock of their political salvation," so they again rang the bell to call the other States to council. They complained of "a disposition in Great Britain to gain partial advantages injurious to the rights of free commerce and repugnant to the principles of reciprocal interest and convenience, which form the only permanent foundation of friendly intercourse," and unanimously consented to empower Congress to adopt the most effectual mode of counteracting restrictions on American navigation so long as they should be continued. And Governor Harrison, by their direction, communicated the act to the executive authority of the other States, requesting the immediate adoption of similar measures, and he sent to the Delegates of his own State in Congress a report of what had been done. This is the first in the series of measures through which Virginia marshaled the United States on their way to a better Union. (Bancroft on the Constitution, 1st vol., 148.)

WASHINGTON SEEKING TO GRAPPLE EAST AND WEST TOGETHER.

Soon Washington's practical mind was seeking to grapple the East and the West together, and in the autumn of 1784, he was journeying among the streams and paths of the Alleghenies, sketching in his mind a system of internal communication of the Potomac with the Ohio; an affluent of the Ohio to Cuyahoga, and so from the site of Cleveland and Detroit and onward to the Lake of the Woods.

A little later the people of Maryland and Virginia petitioned jointly the legislatures of their respective States for the united action for improving the navigation of the Potomac, and we find Washington himself as the leading Virginia negotiator, where he successfully consummated his mission, the plan adopted being speedily passed by the legislatures of both States to their mutual satisfaction, and, as Washington hoped, to the advantage of the Union.

This is but a slender noting of a great chapter in our constitutional history. It shows, on the one hand, how, looking to the ocean, foreign commerce inspired union, and how, on the other hand, looking to the West, internal commercial communication by practical methods was begetting in the minds of men, a consideration which in time found expression in placing the regulation of commerce between the States on the same footing in the Constitution as that of regulation of commerce with foreign nations, whether by land or by sea. The Senator from Texas [Mr. CULBERSON] has admirably presented a phase of these views, which I will not repeat, but it powerfully reenforces them. It was from the broadest view and the wisest perspective of the human mind, looking to all points of the compass, that there grew out of the minds of the Constitution builders a foundation commensurate with the mighty framework which they were about to erect, all-comprehending as to the commercial power, exclusive in its nature, leaving nothing of commerce between State, foreign or domestic, that was not put in the power of the Congress of the United States.

JUDICIAL EXPOSITIONS ON THE POWER TO FIX RATES.

Mr. President, if we have been embarrassed, in mild degree, at least, by the injection of subjects of debate which would seem to have passed out of that category into settled question, the arguments employed deserve to be completely answered, not only by the philosophy of history and by the natural reading of our constitutional papers, but as well by the juridical expositions which have been passed upon this subject. In the centennial year, 1876, the case of Munn *v.* Illinois was decided by the United States Supreme Court. Chief Justice Waite, of Ohio, a broad-minded and learned man, one of great industry and patient attention, gave the opinion. His opinion is one of the most learned essays that have gone forth on this subject. The basic principles upon which he rested it have not from that day to this been disturbed or overruled. He showed how, under the power inherent in every sovereignty, a government may regulate the conduct of its citizens toward each other, and, when necessary for the public good, the manner in which each held or used his property.

He showed further how the exercise of these powers had been customary in England from time immemorial; how they had been exercised in this country from its first colonization to regulate ferries, common carriers, hackmen, bakers, millers, wharfingers, innkeepers, and, in so doing, to fix the maximum charge to be made for services rendered, accommodations furnished, and articles sold. The statutes of all the thirteen original States, Mr. President, abound with such illustrations and show that our forefathers, when they were building States and molding them into a nation, had themselves no sense of the imperfection and impotence of the work which they were constructing.

Said Chief Justice Waite, in Munn *v.* Illinois (94 U. S., 113):

With the fifth amendment in force, Congress in 1820 conferred power upon the city of Washington to regulate rates of wharfage at private wharves; the sweeping of chimneys, and to fix the rates of fees therefor, * * * and the rate and quality of bread (3 Stat., 587, sec. 7); and in 1848 to make all necessary regulations respecting hackney carriages and the rates of fare of the same, and the rates of hauling by cartmen, wagoners, carmen, and draymen, and the rates of commissions of auctioneers (9 id., 224, sec. 2).

From this it is apparent that, down to the time of the adoption of the fourteenth amendment, it was not supposed that statutes regulating the use, or even the price of the use, of private property necessarily deprived an owner of his property without due process of law. Under some circumstances they may, but not all. The amendment does not change the law in this particular; it simply prevents the States from doing that which will operate as such a deprivation.

This brings us to inquire as to the principles upon which this power of regulation rests, in order that we may determine what is within and what without its operative effect. Looking, then, to the common law, from whence came the right which the Constitution protects, we find that when private property is "affected with a public interest it ceases to be juris privati only." This was said by Lord Chief Justice Hale more than two hundred years ago in his treatise De Portibus Maris (1 Harg. Law Tracts, 78), and has been accepted without objection as an essential element in the law of property ever since. Property does become clothed with a public interest when used in a manner to make it of public consequence and affect the community at large. When, therefore, one devotes his property to a use in which the public has an interest he, in effect, grants to the public an interest in that use, and must submit to be controlled by the public for the common good to the extent of the interest he has thus created. He may withdraw his grant by discontinuing the use, but so long as he maintains the use he must submit to the control.

Mr. President, it will be perceived that not only does the regulation of commerce by Congress come within the clear and specific meaning of an expressly enumerated grant of power, but that in the very nature of the case and by the exercise of public employment under the jurisdiction of a sovereign power—the United States—it is a power so necessary to sovereignty, so absolutely indispensable to society, so inherent in the nature of the government of man that for centuries before this nation came into being it was exercised by our mother country, that it was brought here and introduced into every one of the States of this Union, and that by the common law, by the verdict of history, by the invariable habits of mankind, and by distinctive and clear expression of the Constitution of the United States Congress stands in the possession of this power to-day.

My distinguished and able friend the Senator from Ohio [Mr. FORAKER], who has made on this subject a speech of great instruction, one which illuminated to my own mind phases in the practical bearings of it which I had not understood or appreciated until I heard his discussion, will permit me to say—I hope without diminishing from my conception of his ability, his earnestness, his patriotism, or his power—that I conceive that he has used a misleading argument in his speech when he points out that Congress in chartering the Pacific railroads was exercising a proprietary power and not a power of regulation in prescribing their freights or putting conditions upon them such as we invoke here.

If the Senator will read the charter of the Pacific railroads, and if he will read the decisions of the courts in expounding that charter, he will see that the Supreme Court of the United States does not rest the power under any such narrow line of thought as that which he deliminates. It appears that that charter was not only over the territory described by him as under the proprietary rights of the United States, which owned it and was its immediate legislator, but that it applied as well to sovereign and perfected States. In the case of California *v.* Pacific Railroad Companies (127 U. S. Rep., p. 1) it will be found that the Supreme Court has held, in defining this power, that it is within the power of Congress to charter a

railroad to run anywhere in the United States, across the States as well as across the Territories.

In the case of the Gettysburg battlefield the Supreme Court settled another question, which up to that time——

Mr. FORAKER. Mr. President——

Mr. DANIEL. One moment, just let me finish the sentence—which up to that time had not met with its definite adjudication—that is to say, that the United States possess complete eminent domain and for any public purpose may condemn and take the land of any citizen anywhere. In 127 United States they apply that to the charter of interstate-commerce corporations, making the circle round of the completed power of the United States on this subject.

Mr. FORAKER. Mr. President——

The VICE-PRESIDENT. Does the Senator from Virginia yield to the Senator from Ohio?

Mr. DANIEL. With pleasure.

Mr. FORAKER. If I rightly understand the remarks of the Senator from Virginia, he entirely misapprehended the sense in which I employed the term "proprietary" in the connection mentioned by him. I did not employ that term in that connection to indicate that the Pacific railroads, the nature of the charter for which we were then considering, were constructed through lands belonging to the United States or other lands over which the United States had exclusive jurisdiction, as over the Territories; but I employed the term to indicate that it was the United States Government that had the proprietary right in the case mentioned to grant the charter, and, granting the charter, it had a right to attach, as a condition precedent to the enjoyment of the charter, any condition it saw fit to prescribe; and if it saw fit to prescribe in the granting of a charter under which a railroad was to be constructed a right to regulate rates of fare, the taking of a charter was an agreement to that restriction. That was the only sense in which I used the term. I had no thought of using the word "proprietary" in connection with the territory through which the road would run.

Now, as to the charter of those roads, the Senator will look in vain for anything in it indicating that the Congress granted that charter in the exercise of its power to regulate commerce. It granted the charter, as is expressly stated both in the title to the act and in the body of the act, in the exercise of its power to provide for the national defense, to establish post-offices and post-roads, etc.

It is true that in 127 United States, as the Senator says, there is found in the opinion of the court a statement to the effect that Congress, in the exercise of its power to regulate commerce, may authorize the construction of a road, and, I think, it goes so far as to say may construct and operate a road; but it is not true, as I understood the Senator to say, that that was an opinion of the court and that that part of the opinion of the court was necessary to the decision of that case. It was not. It was, on the contrary, as pure an obiter dictum as was ever uttered from the bench. It had no relevancy to the questions before the court at all. The opinion was written by a very careful judge, Mr. Justice Bradley, one for whom I have the most profound respect, but it was, nevertheless, nothing in its relation to that case than an obiter dictum pure and simple.

The point I made all the way through—I hope I do not interrupt the Senator too much; and, if I do, I shall be glad, of course, to desist——

Mr. DANIEL. I yield to the Senator with great pleasure.

Mr. FORAKER. The point I made all the way through in connection with the use of the word "proprietary" was that the power to regulate commerce conferred by the Constitution on the Congress, subject only to the restrictions of the Constitution, is a plenary power, just as complete in itself as is the power of a State to regulate commerce.

But the question remains, What is the power of the State to regulate commerce? I contended then that the power of the State to fix rates was a proprietary right that does not belong to Congress in that connection. The State has the same right that the United States Government exercises when it grants a charter. The State incorporating a railroad can prescribe—and it retains the right, if it does not see fit so to prescribe in the charter—any regulation it may see fit. That is perfectly competent to the State, and the Supreme Court of the United States has never in any decision whatever passed upon the question of the right of the Federal Government in the exercise of the power to regulate commerce to prescribe what rates shall be charged, maximum or otherwise.

In the Munn case, on which the Senator comments and in connection with which he pays such a deserved tribute to the late Chief Justice Waite, the question was whether or not the State of Illinois had the power to prescribe maximum rates of charges for the use of elevators. In that connection, speaking of the sovereignties that were complete in themselves that have this proprietary right, he did quote what had been done by Congress with respect to the city of Washington in authorizing this city to prescribe maximum rates of charges for ferries and other public conveniences, but I called attention to the fact that, according to all the elementary authorities, that is not a delegation of legislative power in the sense in which we ordinarily discuss that question, but that it is an exception to that rule, quoting one authority only out of many that I might have quoted, because it is so elementary a proposition I did not think it necessary to dwell upon it.

So that there is nothing in the Munn case, where the authority under consideration was that of a State which had not only power to regulate commerce, but had the proprietary right to fix rates, and nothing in the citations the Senator makes as to what Congress did in respect to the city of Washington, which is out of the ordinary rule, that contravenes in any respect anything for which I contended.

The Senator will pardon me for such an extended interruption. I would not have done it only he was so gracious and so obliging that somehow or other when you get started in imposing on him you can not help it.

Mr. DANIEL. I am very glad the Senator interrupted me, but I think the Senator will take a good deal longer to explain his explanation. I hope, however, he will not do it now.

Mr. FORAKER. I will be content to let it stand in the RECORD alongside with what the Senator says, trusting that anybody who will read it will conclude that it does not need any explanation.

Mr. DANIEL. I did not mean to reflect upon the Senator at all, but I was attending in my own reflections to the fact that, instead of diminishing the powers of Congress, the Senator had shown by his remark that they had an additional power about building railroads, and that one of self-defense or national defense. Of course, if they may charter a railroad and build it and create it, they may put any regulation they please upon it. They can regulate it; and it occurs to me, Mr. President, that in developing a new aspect of the subject the Senator has in no wise contracted my argument, but simply enlarged and reenforced it.

Mr. FORAKER. Mr. President, if the Senator will not complain of me—I will not interrupt the Senator for a moment longer than it is agreeable—the Congress does have powers beyond the one power to regulate commerce. The point I am making is that we are proceeding here under the one independent power to regulate commerce, and that this power to do these other things is deducible, not alone from that power, but from the other powers that have been conferred by the Constitution on the Federal Government.

Mr. DANIEL. Mr. President, we are proceeding here under all the powers we have got under the Constitution. If we have power to so proceed, whose business is it to question the power we are exercising, if we have got that power?

Furthermore, the Senator says, as if making some criticism or detraction from the arguments and citations that have been made, that the Supreme Court has never yet in a direct case passed upon a rate and held that a Congressional rate was all right. It has not passed upon such a question directly for the simple reason that no such question has ever been or could have been before it.

Mr. FORAKER. Mr. President, all I want——

Mr. DANIEL. Let me finish my sentence, if you please.

Mr. FORAKER. It is an open question.

Mr. DANIEL. It has never passed upon a rate enacted by Congress, because no rate enacted by Congress or an agency of Congress has ever been before it. The Senator says it is therefore an open question. That is a very broad remark to make in view of the fact that the court has time and again, over and over, year in and year out, recognized the power of a State within itself to make a rate, and declared, or taken for granted, and expounded as a principle that our power over commerce is complete, exclusive, and unlimited in the Constitution of the United States, and built up an analogous system on the subject in the United States compared with that of the States. It is true, however, and is obliged to be true, that this particular case in this particular form has never been presented to the Supreme Court of the United States—a fact that should be taken in connection with the other fact, that all the indicia of opinion and of expression on the subject have pointed to their conclusion in like manner as has been thus stated.

Mr. FORAKER. Mr. President——

The VICE-PRESIDENT. Does the Senator from Virginia yield to the Senator from Ohio?

Mr. DANIEL. Certainly.

Mr. FORAKER. I was only going to suggest to the Senator

that there is no difference of opinion between him and me as to what has been decided. The only point I was making a moment ago was this, that all the decisions of the Supreme Court with respect to rates have been with respect to rates made by the States through the acts of their legislatures or through agencies appointed by the legislatures of the States, and I was trying to distinguish now, as I did try at considerable length to distinguish when I addressed the Senate on that subject on February 28, between the power of the State to do that and the power of the Federal Government in the exercise of its power to regulate commerce.

That reminds me to say that the Senator a few moments ago commented upon my remarks at that time and took exception to what he said my statement was, that a rate was not an article of commerce. It is true I said it was not an article of commerce. I said more than that. I said that the rate charged by a carrier was not an article of commerce; neither was it an instrumentality of commerce; neither was it a facility of commerce; neither was it anything that had to do with the purpose of commerce which looks to the safe carriage of life and the safe carriage of property.

I can not any more than call attention to that at this time without unduly interrupting the Senator, and, of course, I do not want to do that; but I take advantage of this opportunity, through his kindness, to broaden his statement a little bit as to what I then said.

Mr. DANIEL. Mr. President, of course I can not quote an opinion of the Supreme Court which has decided this question on the presentation of the actual case involving a rate made by Congress. All I claim is that the views expressed by the Supreme Court comprehend and embrace such a case, and before——

Mr. NELSON. Mr. President——

The VICE-PRESIDENT. Does the Senator from Virginia yield to the Senator from Minnesota?

Mr. DANIEL. I yield for a question.

Mr. NELSON. Has not the Supreme Court, in substance, time and again decided that the power of Congress over interstate commerce is as broad and complete as that of the State over State commerce?

Mr. DANIEL. I think I have shown that that is the view of the courts.

Mr. FORAKER. If the Senator from Virginia will allow me, what the Supreme Court of the United States has time and again decided, to which the Senator from Minnesota refers, is that the power to regulate commerce conferred by the Constitution on the Federal Government is as broad and plenary as the power to regulate commerce that belongs to a State. But the State, being a complete sovereignty, has this inherent proprietary right which enables it to go further than the Constitution authorizes the Congress to go. That is the distinction which has been made all the time.

Mr. NELSON. I want to say to the Senator from Ohio that if the State has the power to regulate rates, why has not, in like manner, Congress the same power over interstate commerce that the State has over State commerce?

Mr. FORAKER. If the Senator will read the remarks I made here on February 28 he will see stated at length why, in my opinion, the State has the power to regulate rates that does not belong to the Federal Government under the power to regulate commerce. I can not, in the time of the Senator from Virginia, answer at the length that it would be necessary for me to answer to properly make response to what the Senator from Minnesota says.

Mr. DANIEL. Mr. President, I will conclude what I have to say on this subject—that is, the power of Congress—by reading an extract from the opinion in the case of the Pensacola Telegraph Company *v.* The Western Union Telegraph Company (96 U. S.), in which Chief Justice Waite again gave the opinion. He sustained in that case the broad regulating power of Congress, and held that these powers extended in their application to telegraph lines, to the postal service, to military and post roads, and covered the whole territory of the United States, whether crossing State lines or no. He said:

> The powers thus granted are not confined to the instrumentalities of commerce or the postal service known or in use when the Constitution was adopted, but they keep pace with the Constitution of the country and adapt themselves to the new developments of time and circumstances.
>
> They extend from the horse and his rider to the stage coach, from the sailing vessel to the steamboat, from the coach and the steamboat to the railroad, and from the railroad to the telegraph as these new agencies are brought into use to meet the demands of increasing population and wealth.
>
> They were intended for the use of the business to which they relate at all times and under all circumstances.
>
> As they were intrusted to the General Government for the good of the nation, it is not only the right but the duty of Congress to see to it that intercourse among the States and the transmission of intelligence are not obstructed or unnecessarily encumbered by State legislation.

These, Mr. President, are broad and deep-rooted principles, and it would be most curious indeed if the all-embracing power which has been expounded and illustrated in so many diverse forms, as going down to the hackney coach and to the ferry, across the ocean, along the railroad, and the telegraph line did not embrace that important, substantial, and most moving matter—the rate of freight or passenger travel upon a road. I am content thus to leave it.

THE POWER OF CONGRESS TO CREATE COMMISSIONS.

I will address myself now to another question. It is with reference to the power of Congress to put its power in the hands of a commission, and to a consideration of what is the due process of law which must be observed in dealing with questions which arise under the provisions of this measure. I heard, and I have read with deep interest, the able speech which was made on this floor by the Senator from Pennsylvania [Mr. KNOX]. He predicated much that he had to say upon a general declaration in that speech, with which I feel obliged to take issue. He said:

> It is the heritage of every English-speaking man or association of men to have his rights determined in a court. It is for the court to decide what those rights are.

This is an idealistic view of the Federal Constitution. As I read that document this view is not sustained by an examination of the Supreme Court decisions. If we regard the facts disclosed by those decisions the declaration of the learned and distinguished Senator would only be made to conform accurately with them when qualified so as to read that "sometimes it is the heritage of every English-speaking man to have his rights determined in a court," for it is equally true, as a general allegation, that sometimes, indeed many times, it is not so, according to the Supreme Court view and according to the American practice.

The conclusions drawn from this broad assertion by the Senator from Pennsylvania he thus expressed:

> An attempt to specify what right shall be determined by the court might be fatal to the constitutionality of the legislation. If the specification should not include all his rights, he would be shorn of a constitutional privilege. Should it undertake to enumerate rights which he could not establish, it would be meaningless and unintelligent legislation. If his rights are determined solely by the Constitution, that instrument would be the measure employed in their determination. If he has rights vested upon some other foundation, a limitation placed upon him to have nothing but his constitutional rights determined would be a fatal objection.

So the declaration of the Senator is designed by him to apply to every right of a citizen, and to maintain that as to his every right he can not be made to suffer without having provision made by Federal law that deals with it for testing that right in court. Any other test by an administrative board, however dignified, however competent, would be to his mind incomplete and would lack the qualities of due process of law.

But the declaration of the Senator and his conclusions are alike refuted by the Supreme Court of the United States in many decisions to which I shall presently advert. Here let me say that I do not overlook the fact that the Senator, from whose utterance I dissent, has been eminently fair and impartial in applying the doctrine he contends for, and by no means confines its protection to the carrier. He upholds, amplifies, and extends it to the shipper and the passenger. He would require, when an injunctive process issues from a court, to suspend for a time being a rate fixed by the Commission, a cash deposit or bond should be given by the carrier that would secure to the parties entitled to repayment the difference between the Commission's rate and the railroad rate if the Commission's rate were sustained.

OFTEN NOT THE HERITAGE OF AN AMERICAN CITIZEN TO HAVE HIS RIGHTS DETERMINED IN A COURT.

I undertake to say, in contravention of the broad, general, axiomatic expression of the Senator, that there are many cases in this country in which the highest and most sacred rights of property and of persons are passed upon finally under administrative law. I also undertake to say that they are of equal dignity, if not of greater dignity, than anything that is involved in the rates of passenger or freight traffic.

I wish, then, Mr. President, in order to get at the meat of this matter, as it underlies the measure which we are endeavoring to mold, to discuss what is due process of law.

Mr. KNOX. Mr. President——

The VICE-PRESIDENT. Does the Senator from Virginia yield to the Senator from Pennsylvania?

Mr. DANIEL. With great pleasure.

Mr. KNOX. Of course it was my own misfortune as well as my own fault if the Senator from Virginia understood that por-

tion of my remarks which he has just read to apply to any other class of rights than the class of rights proposed to be dealt with in this legislation—that is, rights of property, vested rights. Of course I would probably be one of the last men to stand upon the floor of the Senate and deny that under the domain of administrative law, where the nation or a State is dealing with that over which it has complete control, the rights of parties are very often, indeed almost generally, disposed of through administrative boards, as, for instance, the rights of the citizen to transmit his mail and the conditions under which he shall be permitted to transmit it through the post-office. That is a matter over which the Congress has complete control, and of course the administration of the affairs of that Department can be dealt with by Congress as it sees fit. So in the case of the distribution of public lands; so in the case of the citizenship of Indians; so in the case of immigration. Anything over which the Government has complete control and where it defines the rights of parties, of course can be handled through an administrative board.

Mr. ALDRICH. In custom matters.

Mr. KNOX. And in custom cases. But my proposition, of course, had to do only with the rights we were undertaking to deal with in this legislation; and I hold myself unfortunate that I did not more specifically indicate it. I presumed it would be assumed by those who read my remarks, and any criticism the Senator from Virginia may have upon the assertion based upon these administrative cases of course I freely accept.

Mr. DANIEL. I have no doubt the Senator fully understands the difference between those cases in which administrative law is held to be conclusive by the courts and those in which it is held that the term "due process of law" involves juridical process. At the same time, I had to treat the Senator's speech as he uttered it. I have seen that broad, sweeping sentence of the distinguished Senator from Pennsylvania put in newspapers as a campaign banner, so to speak, and as matter of rebuke and caution to those who would undertake to narrow the jurisdiction of the Federal courts in this matter. I am sure it was simply a general utterance, and had the Senator cautioned his own mind he would have confined it, as the courts confined it, to a particular class of cases, to which I shall presently refer.

Mr. KNOX. Mr. President——

The VICE-PRESIDENT. Does the Senator from Virginia yield further to the Senator from Pennsylvania?

Mr. DANIEL. Certainly.

Mr. KNOX. Only for a moment. I merely want to add to what I have already said that the Senator will observe that all of the authorities I cited in support of that proposition show the distinction which I have just now undertaken to draw between the two classes of rights. So one could hardly in reading the speech as a whole or in listening to it as a whole be mistaken as to the intention.

Mr. DANIEL. I have not the slightest doubt in my own mind as to the perfect fairness and candor of the Senator from Pennsylvania. I never intended to intimate a criticism of that character in any way whatsoever. But the Senator speaks from a standpoint of such authority upon questions of law and his reputation and character are so well known that I merely apprehended that if that broad statement were continuously quoted without the explanations which belong to it, it might put some who entertain somewhat different opinions from the Senator from Pennsylvania in an ill light of criticism before other minds which did not appreciate these distinctions as he does.

I also wish to make it a basis for showing, if I may, the distinctions taken on the class of cases in which the courts consider that due process of law involves juridical process and those taken on that other class of cases which require only administrative powers as due process of law.

"DUE PROCESS OF LAW" AND "LAW OF THE LAND."

Due process of law is generally interpreted in our form of government to be an expression equivalent, or nearly so, with the term "law of the land" as used in Magna Charta. It is that law which the people themselves have ordained and laid down for the regulation of their society and to which they have become accustomed.

(1) The constitution of a State is the law of the land for that State, and observance of the procedures which it commands is due process of law.

(2) The Constitution of the United States is the law of the land for the whole Union, and procedures in consonance with that Constitution, and none other, are due process of law.

No interpretation of the law of the land or due process of law has so put its inhibition upon the power of Congress or of a State legislature as to require either body to preserve upon the statute books of the country any particular remedial statute of jurisdiction whatsoever, whether of criminal law, municipal law, civil law, or equity, which may be there at this time, provided only that a legislature under the Constitution and according to judicial construction can not remove an existing statute upon which contracts have been built so as to tear down those contracts or to subtract from their substance and foundation; provided, too, that jury trials are preserved where required by the law of the land; and provided also, that in changing some existing due process of law a legislature shall leave a fitting and appropriate remedy against constitutional wrong which preserves to the citizen the right to be heard in court when the original question of legal right or wrong is juridical, or where the original question is purely administrative leaves the right to be heard by an administrative body. To go beyond this would be to freeze, if not to completely paralyze, the powers of the legislation, and to put a bar to those changes of legal progress which may be deemed essential by representative bodies to advancement in the science of judicature and administration.

"DUE PROCESS OF LAW" OLDER THAN MAGNA CHARTA.

The term "due process of law," as used by constitutions and courts, is older in English history than Magna Charta, accorded by King John to the Barons at Runnymede in 1215, nearly seven hundred years ago. Since that period of English history, whatever aberrations our race has been afflicted with, however star-chamber courts, military courts, or usurping magistrates have invaded the law of the land, and however passionate mobs or revolutionary movements have swept over it in waves of frenzy, the masses of the people of our country and of our race have adhered in their devotion to the sacred rights of due process and law of the land, for they are basic to our liberties. These terms are a legal guaranty, and there is no principle of our liberties to which we should be more devoted or which we should more faithfully defend.

CORPORATIONS, LIKE INDIVIDUALS, ENTITLED TO PROCESS OF LAW.

Since the rise of corporations—artificial persons, as they are called—and since the fourteenth amendment was adopted, it has been established beyond debate by the courts that the corporation is a person in the sense of the Constitution, and decisions to this effect are so accepted that no one challenges them or seeks to reverse them.

It is to be remembered in the consideration of such a matter as this that whatever may be the weaknesses or the wickedness of corporations which have been developed, and whatever and however justly offenses have been imputed to them, they are no more and no less than an aggregate of human beings, concatenated together by popular opinion and by regulative enactment, and with all their vices and with all their faults they are no more and no less than reflexes of the conduct of the people of flesh and blood who compose them. It must be remembered, too, that if they be but man-made, artificial creatures, the people were and continue to be their creators, and in some respects their beneficiaries as well as their victims. Like all artificial and natural creatures they are mixtures of good and evil.

A corporation is, in fact, only a shell with a fancy name upon it. Everything inside of the shell is property acquired under charters which the people themselves have granted, plus the human beings who own the property, in the shares prescribed by law, and plus or minus the water which may in some sort of fashion have inflated the shares. These corporations, being created by law and living by and under law, have just the same title to be protected by the law of the land and by due process of that law as has every individual citizen of our country, whether he be on the inside or the outside of the corporate shell.

What, then, is the definitive meaning of law of the land and process of law as applied to such cases as this? Just this: That every individual, whether a human person or a composite person called a corporation, is entitled to have and hold his, her, or its property, his, her, or its liberty, in accordance with the laws of this land, made in pursuance of constitutional authority. The law of the land embraces the statutes as well as the Constitution. It is the general law, which, as Daniel Webster declared, "hears before it condemns, which proceeds upon inquiry and renders judgment only after trial;" "and has," he added, "the meaning that every citizen shall hold his life, liberty, property, and immunities under the protection of the general rules which govern society."

Another master of jurisprudence has said:

> The good sense of mankind has at length settled down to this, that they were intended to secure the individual from arbitrary exercise of the powers of government, unrestrained by the established principles of private right and distributive justice.

"DUE PROCESS OF LAW" SOMETIMES INCLUDES JURIDICAL POWERS AND SOMETIMES DOES NOT.

This law of the land, or due process, however, does not require that there shall be the same process of law or the same law of the land with reference to classes of persons or things which are in their nature different and which according to their nature require a variation of methods.

Story struck the right keynote when he said in his work on the Constitution that different principles are applicable in different cases and require different forms and proceedings. In some they must be judicial; in others not. (See Story on the Constitution, sec. 1943–1946.)

Every lawyer must realize that procedures must vary according to the nature of the things to be governed. A proceeding in attachment against an absconding debtor must ex necessitate rei vary from that of a suit of ejectment for land.

THE SETTLED MEASURES OF LAW FOR THE PROTECTION OF RIGHTS MUST BE OBSERVED.

A proceeding in libel against a piratical ship must vary from a proceeding for the partition of an estate or for enforcing in equity a resulting trust. So Story adds that "due process of law" in each particular case means such an exercise of the powers of government as settled maxims of law permit and sanction, and under such safeguards for the protection of the individual rights as those maxims prescribe for the class of cases to which the one being dealt with belongs. In short, then, we must deal with these cases of interstate transportation according to their kind, using such instrumentalities, observing such mechanisms, using such safeguards, as properly, naturally, customarily apply to the conditions and interests which we deal with and directing them to the protection of all individuals and all corporate rights involved.

JUDICIAL REVIEW OR APPEAL, OR BOTH, IN EQUITY.

Let me now advert to the application of these general principles and bring them to bear upon the question which has been here raised. That question is twofold. Shall we provide in this bill for the juridicial review or a judicial appeal from the action of the Interstate Commerce Commission in a given case? Are we obliged to do it or otherwise leave the bill in unconstitutional form? I share in the opinion that it is wisest and best to provide for either a judicial review or appeal, but at the same time I do not doubt that if no judicial appeal or review were provided for, the system of equitable jurisdiction which has been administered with reference to such cases for at least thirty years would prove sufficient to comprehend and to secure to all parties in interest every right to which they may justly lay claim.

COMMISSIONS AND COURTS BOTH LIABLE TO ERROR.

When a passenger or a shipper has brought a case of alleged wrong before the Interstate Commerce Commission, that body may decide in favor of him or against him. It is just as liable to err as a court, or if not so, it would be only because the Commissioners are more apt to be more familiar with the intricacies and bearings of rate questions than courts are. The men who constitute the Commission are likely to be and are assumed to be upright and honorable men. As a rule also, judges are likewise; and if there be any difference between judges and the Interstate Commerce Commission with respect to liability to err, there is a certain degree in favor of the lesser liability, in so far as the law is concerned, in favor of the judges, from the fact that they must be technically at least learned in the law, and are more apt to be trained and versed in that profession.

Now, suppose the Interstate Commerce Commission decides against a shipper or a passenger, or whosoever may claim that the transportation company has acted with error. No matter what the shipper or passenger may lose, he is at the jumping-off place and is done with unless he may appeal to a court.

Suppose that there should be such a decision against a corporation, and the corporation goes off with a sense of grievance—and the side that goes off is apt to go with a sense of grievance—is it wisest and best for the people of this country to leave the matter solely with the Interstate Commerce Commission? Men are more careful and painstaking when a reviewing body may scrutinize and pass upon their work.

THE EXISTING JURIDICAL STATUS.

But, Mr. President, I apprehend that we are foreclosed from the consideration of that subject by the juridical status of this case. As an original question, it may have been wisest and best to have reposed the whole subject of freight making in the hands of an expert and honorable commission, who would study that single subject continuously and make themselves thoroughly conversant therewith; but we do not do it, and the courts have established a system of equitable review. We have the same power to do it that the States have with respect to State charters, and that the country has with respect to Federal or national charters to repose such power in the directors of railroads. No director of any railroad has any natural right to fix freight or passenger tolls on a public highway. There has not been a day in the history of this country since a railroad was run that the tolls of that railroad were not fixed under powers delegated by the State legislatures or under powers delegated by the Federal Government. The corporation itself had no power whatsoever save what the State gave it in the one case, and the Federal corporation had no power, nor have its directors any power, nor have its officers any power, save such as were granted by Congress.

If Congress could grant to the corporation the power to make tolls and to directors to act for them in making tolls, it has the same power to grant to commissions to make tolls.

Then, Mr. President, when they grant the power to prescribe tolls according to the certain standard of reasonable and just tolls, why may they not close the matter there and let the Commission's judgment stand for good and all?

PUBLIC AND PRIVATE CORPORATIONS; AND CORPORATIONS OF PUBLIC SERVICE IMPRESSED WITH A PUBLIC USE.

Mr. ALDRICH. Will the Senator allow me to ask him a question?

Mr. DANIEL. Certainly.

Mr. ALDRICH. I assume the Senator would also claim that the directors in any corporation would have no powers except such as were granted by a State or by the National Government?

Mr. DANIEL. Why, of course.

Mr. ALDRICH. The Senator, I suppose, does not mean to have us infer from that that either a State government or the National Government would undertake to say what private corporations should charge for articles of merchandise, or how they should conduct their business?

Mr. DANIEL. Mr. President, the consideration of private corporations has no more to do with the subject we are discussing than has the man in the moon, and the Senator might as pertinently ask me as to whether or not I consider——

Mr. ALDRICH rose.

Mr. DANIEL. Let me answer the question, please. Just wait a little while until I answer. The Senator might as pertinently ask me whether I consider that the moon is made of green cheese. The transportation corporations of this country are neither public nor private corporations. A public corporation is one that is solely organized for public purposes, such as a city, a town, a county. That is a public corporation. A private corporation is one that is solely organized for private purposes, such, for instance, as a corporation to sell green groceries or books. A transportation company or common carrier is in the nature of both a public and a private corporation, public in the sense that it has granted to it the State or Federal power of eminent domain, that it is authorized to take the realty of the citizen in invitum and appropriate it to its own use, and, in the next place, because it exercises a public calling which its charter has authorized it to pursue, either by the State or by the nation. That is the difference.

Mr. ALDRICH. Mr. President——

The VICE-PRESIDENT. Does the Senator from Virginia yield to the Senator from Rhode Island?

Mr. DANIEL. Yes, sir; for a question, but I would like to get on with my discourse.

Mr. ALDRICH. I was not about to ask a question, but I was about to state the reason why I asked the question which I did.

The Senator was proceeding upon the theory that directors of railroad corporations have no rights except those given them by the Government, and therefore that the Government could transfer the powers of railroad directors to a commission of its own creation. He made no distinction, and apparently the sole reason was the fact that the corporation existed by reason of national action or State action, and therefore we could undertake to control all of its affairs. He did not then make the distinction which he has since made between what he calls private corporations and railroad companies, which I supposed he would make.

Mr. DANIEL. Some of us can not say all we are thinking in one sentence, and we apprehend, as a rule, that gentlemen who are hearing that sentence understand its connection. I have no doubt a little reflection would have brought these same thoughts to the mind of the Senator.

Mr. ALDRICH. I was afraid the Senator might be led into the same style of argument of which he accused the Senator from Pennsylvania a few minutes ago. He is a great lawyer, and he is speaking ex cathedra upon these subjects. I was afraid somebody might hear his remarks or read them and

conclude that he thought the Government of the United States having created private corporations, it could appoint commissions to control their business.

Mr. DANIEL. I am speaking, Mr. President, on one subject, on the subject of the corporations to conduct commerce between States—public-service corporations—that offer themselves as carriers for public patronage, that have exercised the right of eminent domain in the State and could get it from the country for public use. If the Senator will read, after it is printed, what I have said and should find that I have run off the track and made too broad an assertion, I would be very glad to correct it.

I was merely defining what I conceive to be the status of these corporations in order the better to apply to questions before us a consideration of what is due process of law with respect to them in this case. I will turn at once now to that, and to a differentiation of the juridical cases and those which are administrative in their nature.

THE JURISDICTION OF FEDERAL COURTS AND THE INJUNCTION.

It is proposed, Mr. President, to recognize in this bill the right of a carrier which has been subjected to a rate to which it was opposed by the Interstate Commerce Commission to file an original bill in equity in a circuit court of the United States, and thereby to set aside the rate fixed by the Commission. It is contended that it would be appropriate after the Commission had fixed the rate to withhold from the power of the circuit court the legal right to issue an injunction and stay the application of the rate prescribed by the Commission until the whole case was fully heard.

I am not permitted by my own reading of cases upon this subject to follow what might be the bent either of my own preference or my own opinion. The juridical status of any legal question is as much a fact as if it were composed of so much matter which could be weighed or measured. As I read the decisions of the Supreme Court of the United States, and there are not a few of them, it practically holds that when a rate has been fixed by any commission acting under Congressional power, the court of equity is open for that rate to be brought in question by any party in interest who has suffered by its infliction, and that it is appropriate under old and hoary principles of equity jurisdiction to issue an interlocutory injunction and hold the whole matter in abeyance until the subject is completely investigated and adjudicated.

Finding many decisions to this effect and finding that this practice has been observed in many cases from States in which the actions of State legislatures and State commissions have been brought to the bar of equitable consideration, I am obliged to recognize that such is the established equity practice in this country, and such also is the settled view of the Supreme Court of the United States.

THE INJUNCTION OLDER THAN MAGNA CHARTA.

The injunctive process of the court of equity is a very ancient process, older than Magna Charta. Mr. Spence, in his great work on equitable jurisprudence, finds, as he says, the first introduction of the injunction in the reign of Henry Beauclerc, the annual date of which is not given, but it was between 1100 and 1136, the period of his reign. From that day to this injunction has grown. It was borrowed from the Roman law, the interdict of the old Roman prætor, and, like the great body of the refined and conscionable principles of equity jurisprudence, it was ingrafted upon the narrow though manly and self-assertive jurisprudence of the common law by importation from the rich and fertile judicial system of Rome, the greatest nation of antiquity.

Mr. BAILEY. Will the Senator from Virginia permit me to ask him a question?

Mr. DANIEL. Certainly.

Mr. BAILEY. Does the Senator from Virginia hold that not only the processes and writs and practices of the court of chancery in England were adopted, but that the whole body of equity jurisprudence was adopted by the Constitution of the United States?

Mr. DANIEL. Mr. President, the Senator must let me answer, perhaps, by paraphrase. I do not hold that this country or this Congress is held down to any particular practice of any former generation whatsoever, saving only what is embodied in the Constitution of the United States. I have endeavored to define as clearly as I could in a previous portion of my remarks that if the new statute or amendment of existing law takes place so as to preserve in vitality and vigor a complete remedy to the person who has an ancient remedy, it is enough. I will illustrate, if the Senator will withhold his question a little while, in what limitations I express this view and why I fear the danger point would arise if his amendment were adopted, and also how I would respectfully suggest that some of the danger in that point might be avoided.

Mr. BAILEY. Mr. President——

The VICE-PRESIDENT. Does the Senator from Virginia yield to the Senator from Texas?

Mr. DANIEL. Certainly.

Mr. BAILEY. I meant to indicate to the Senator the difficulty that would arise if we hold that Congress is powerless to modify the practice of proceeding or writs of a court of equity, because it must necessarily follow, then, that the great principles of equity jurisprudence are beyond the control of the Congress. I hardly think that any Senator would be willing to go that far. To say that we can not change the practice or processes, and yet that we can abolish the rule of decision, seems to be a very curious contention.

But I waive that aside, in view of the Senator's answer, and I ask him if he will be good enough to lay before the Senate any decision which holds that intermediate process is necessary to the due process of law? I heard him quote, during the course of his remarks, Webster's famous definition of the law of the land, which, as I recollect now, was a part of his address to the court in the Dartmouth College case. He described it as a system under which the matter is heard before it is decided.

So far as I am informed, I do not believe the Senator can find any cases which hold that intermediate process is essential to due process of law. I am glad, however, to see that the Senator from Virginia abandons the objections offered by others to my amendment and puts it upon the due-process clause of the Constitution instead of the judicial clause.

Mr. DANIEL. Mr. President, I am undertaking to develop a conception of this case which requires a succession of ideas and not the summary utterances of a single one. While interruptions may be naturally provoked by a certain unqualified utterance of a speaker, it is very often the case that if he were to unfold the whole of his thought the interruption would itself be answered. Do not suppose for a moment that I am complaining, Mr. President. I consider that the Senator's exposition of the powers of Congress with respect to the inferior courts of this country, which it is authorized by the Constitution to create, was a masterly and unanswerable exposition of that great theme. I will not say that I heard every word of it; I will not say that I have read every line of it; but its substantive thought utters my convictions not less than his. Nevertheless, there is an honest and sincere difficulty in my own mind in reaching the conclusion that it is wisest and best to prohibit the issue of an interlocutory injunction or a suspension of the rate until a court has passed upon it.

If I were at this moment called upon as a judge to decide that question, I should hesitate and I should desire to study it further. It is one of the most delicate subjects of our whole jurisprudence; and until I had heard it discussed pro and con and had had the very best light put before my mind that could be adressed to its consideration, I should hesitate to express my own judgment. The leaning of my mind, just as is that of the Senator from Texas, is against political power in courts, and many of the decisions of the Supreme Court on this great subject I have read with much comfort and pleasure, because the judges have time and again declared that in no case would they set aside the action of a commission unless it was palpable to their minds—plainly and clearly palpable—that the Commission had in effect taken property without full compensation. It is apropos of that declaration, which is one of the fundamental principles of the Supreme Court upon this subject, that I feel that there arises a danger in this case, to express it mildly, of undertaking by Congress to say that a remedy which has been employed for thirty years, which has become customary to the jurisprudence of the United States, which is habitual in its exercise before the courts, and which the courts have employed with the approbation of all their judges—I am afraid that if that were to go before that same court, as it naturally would, they would say that in this case the carrier has not had due process of law, and then, Mr. President, what would be the situation of this controversy? I do not doubt that you can make the general jurisdiction of the circuit court, or of any other court which Congress creates, what in your wise judgment may be your pleasure, but the case before us is not one as to the jurisdiction of the courts so much as it is what are you going to do with a case, by subtracting a case or a particular class of cases from a general jurisdiction which you have declared to be wise and just? It is a narrower question we are now discussing than the general jurisdiction of courts.

It will be observed when we read certain other decisions that however it may be with administrative matters before the executive department of this Government, it has been the habitual ruling of the Supreme Court, that with respect to

rates fixed by a State legislature or rates fixed by a State commission, neither the legislature nor the commission can make those rates conclusive, but that a United States court has the right, under the Constitution of the United States and through the process of a bill in equity, to bring the parties before the bar of a United States court, and, if such rate is found to be unjust, to set aside that rate as one that lacks in due process of law.

Nor can it be doubted that the same jurisprudence will be exercised by the United States courts as to matters of the United States. That is a juridical status that looks Congress in the face. Now, then, what has the interlocutory injunction to do with it? What is an issue in an interlocutory injunction? The issue of an interlocutory injunction is never a matter of right, but rests in the sound discretion of a court. In order to obtain an interlocutory injunction a plaintiff must show one of several things: First, either that there is no doubt of the wrongful nature of the act sought to be enjoined. Suppose it be true that it is obvious to a chancellor, as soon as he looks at a bill in equity, that a wrong has been done; is it wise for Congress to say that he shall not relieve the plaintiff? Second, or that his own claim of right has been acquiesced in without question for a long time, or that the injury which will result to himself from the refusal of the injunction will be very great and that to the defendant, from the issue thereof, very slight. Otherwise an interlocutory injunction will be denied.

I take that from a short summary in Foster's Federal Practice, volume 1, page 233.

THE STATUS WHEN THERE IS A CONFISCATORY RATE ON THE CARRIER ON ONE SIDE AND A HEAVY FINE ON THE OTHER.

Let us put ourselves in the attitude of a carrier suitor in a United States court in a case where the Interstate Commerce Commission has fixed a rate which it charges is confiscatory of its property and does not accord to it the just compensation which is required by the Constitution of the United States. By another provision of this bill, section 16, that carrier is charged $5,000 a day as a fine while he is suing in court to ask the court simply to let matters stand in statu quo until he can be fully heard. Unless he has instantly adopted and put in force the rate to which he objects, $5,000 fine per day is accumulating upon him; and when, on the other hand, the difference between what the carrier considers a righteous rate and what the Interstate Commerce Commission considers a righteous rate may amount to another $5,000 a day going out of his pocket. Is it wise, is it just, is it equitable, unconditionally to put that individual, be it corporation or man, under the pitiless storm of an incessant fine and subject him at the same time to an incessant loss until such time as everybody may be fully and finally heard and denying him the customary process of the court for his protection? It does not strike my own mind, Mr. President, as wise and equitable to do this.

JUDGE CURTIS'S OPINION IN 18 HOWARD'S REPORTS, REVENUE CLAIMS.

I am further disturbed in my meditations on this subject by reading some of the decisions of the United States Supreme Court, out of which I deduce what is regarded by the courts of this country as the difference between due process of law in purely administrative cases and due process of law in those cases of a peculiar kind, which require juridical process to their finality. I turn, Mr. President, to the case of Murray's Lessee et al. *v.* The Hoboken Land and Improvement Company. It is in 18 Howard's Reports, 272.

It was an action of ejectment. Both parties asserted title under Samuel Swartwout, the plaintiff, by virtue of an execution, sale, and deed made on judgment obtained in the regular course of judicial proceedings against him and the defendant, by a seizure and sale by the marshal of the United States, under the distress warrant issued by the Solicitor of the Treasury, under the act of Congress of May 20, 1820. Let it be noted that the Solicitor of the Treasury issued the distress warrant, not a judge. The Supreme Court of the United States unanimously held that the power exercised was executive and not judicial, and that the issue of the writ and the proceedings under it were due process of law within the meaning of the Constitution.

Judge Curtis gave the opinion of the Supreme Court. It is rare than one can read a more minute, learned, or more carefully considered opinion. It enters into the sinuosities and irregularities of our jurisprudence and into the diversified forms of process of law. In holding that the distress warrant was due process of law in the taking and selling out of real estate on executive action, he reaches that conclusion by a profound study of the history of English and American jurisprudence. It was a Government claim which related to the revenue which had in English jurisprudence the peculiarities which belong to the summary process that pertains to the revenues of the Crown. The judge said:

Tested by the common statute law of England prior to the emigration of our ancestors, and by the laws of many of the States at the time of the adoption of this amendment, the proceedings authorized by the act of 1820 can not be denied to be due process of law when applied to the ascertainment and recovery of balances due to the Government from a collector of customs, unless there exists in the Constitution some other provision which restrains Congress from authorizing such proceedings.

So that you trace the due process of law in this case to the fountain of the revenues of the Crown in England and of the Government in the United States.

DUE PROCESS GENERALLY IMPLIES A SETTLED COURSE OF JUDICIAL PROCEEDING.

Now I read another sentence from this eminent jurist:

For, though "due process of law" generally implies and includes actor, reus, judex, regular allegations, opportunity to answer, and a trial according to some settled course of judicial proceeding.

I would underscore those words, marked as they were in the language of this judge, that as a rule due process of law required the regular hearing and the trial according to some settled course of judicial proceeding.

Yet—

He said—

this is not universally true. There may be, and we have seen that there are, cases under the law of England after Magna Charta, and as it was brought to this country and acted on here, in which process in its nature final issues against the body, lands, and goods of certain public debtors without any such trial; and this brings us to the question whether those provisions of the Constitution which relate to the judicial power are incompatible with these proceedings.

WORDS OF CAUTION.

To avoid misconstruction—

Says the judge, and here come in words which I read with a sense of caution and from which I take warning—

To avoid misconstruction upon so grave a subject, we think it proper to state that we do not consider Congress can either withdraw from judicial cognizance any matter which, from its nature, is the subject of a suit at the common law or in equity or admiralty, nor, on the other hand, can it bring under the judicial power a matter which, from its nature, is not a subject for judicial determination.

Ask the question, "Is this question of a rate as confiscatory of property made by a commission now—if so, how long has it been—the subject of a suit at the common law or in equity or in admiralty?" Unquestionably, Mr. President, the true answer to that question must be that to-day and through the whole course of the jurisprudence of the United States Supreme Court on this subject this is a case held to be peculiarly appropriate to equity. Yet it is proposed to paralyze the strong arm of equity while the law is inflicting a penalty at the rate of $5,000 a day upon the one hand and while, if there be wrong, the pocket is open and pouring out upon the other.

Mr. President, in this great opinion, which is basic of nearly all the decisions which have since ramified through the Departments and the courts, I think the judge takes to pieces this whole subject and clarifies it with the illuminations of a learned, honest, and just mind.

At the same time—

Says Judge Curtis—

At the same time there are matters involving public rights which may be presented in such form that the judicial power is capable of acting on them and which are susceptible of judicial determination, but which Congress may or may not bring within the cognizance of the courts of the United States, as it may deem proper.

That is the second class of cases.

The third class he thus refers to:

Equitable claims to land by the inhabitants of ceded territories form a striking instance of such a class of cases, and as it depends upon the will of Congress whether a remedy in the courts shall be allowed at all in such cases, they may regulate it and prescribe such rules of determination as they may think just and needful. Thus it has been repeatedly decided in this class of cases that upon their trial the acts of executive officers, done under the authority of Congress, were conclusive, either upon particular facts involved in the inquiry or upon the whole title.

* * * * * * *

The fourth class he thus points out:

It is true also that even in a suit between private persons to try a question of private right the action of the executive power, upon a matter committed to its determination by the Constitution and laws, is conclusive.

Thus it will be seen that there are four classes of cases to which the Supreme Court in the case I am considering refers.

1. Those in which "due process of law" includes juridical process—that is, cases which are the subject of suits at common law or in equity or admiralty. These are the cases declared to be unwithdrawable by Congress from judicial cognizance.

2. Matters involving public rights, which Congress may place within judicial cognizance or not as it may deem proper.

3. Cases in which Congress may grant a remedy or not as it sees fit and prescribe such rules of determination as it considers just and needful.

4. Certain matters of private right which Congress may submit to Executive determination conclusively.

THE CLASS OF CASES TO WHICH THE FIXING OF A RATE BELONGS.

Now, Mr. President, I have examined this proposition to take away the right to issue interlocutory injunctions from a court of equity pending that time when a rate is hanging between the decision of the Interstate Commerce Commission and the invited further decision of a court.

Originally a rate is fixed generally in this country by the directors of a corporation. If that rate be an erroneous and oppressive rate, everybody who has that rate imposed upon him for passenger travel or for freight traffic is wronged; but, Mr. President, there is not a moment after that wrong commences when the courts in this country are not open to the citizen to challenge the wrong and to assert his remedy against it. As soon as the wrong, if it be one, in interstate commerce is challenged, the Interstate Commerce Commission investigates it. When it decides that the rate was wrong and puts in another one, the process of law is in course of progress toward maturity, and the corporate property and the use thereof and the compensation therefor are matters in a certain sense under the surveillance and protection of the court, or at least within reach of a remedy.

It is almost as ancient as the hills that when property is in litigation and in course of legal procedure a court of equity will hold the scales in hand between the parties and keep things in statu quo until it is ready to make up its mind upon the subject, and say which way the right or the wrong shall go. The interlocutory injunctions which are issued in rate cases are predicated upon doctrines almost as old as equity, and if you intend to exercise the equitable jurisdiction and leave the bill in equity as the proper procedure in this case, I can not see my way clear to maim the hand which is lifted to apply the remedies of equity, or to attempt to shear the court of any of the rights and discretions which properly belong to the chancellor in such a case. I do believe, however, that the nature of this case is such that a better way may possibly be devised, and one which would lead to swifter decision, which, indeed, is the great end which all are seeking to subserve through the processes that are being devised.

THE LAW'S DELAY.

I have read of a case quoted here in which there was a loss of $300,000 on one side before the case could be heard. Mr. President, undoubtedly the great evil that underlies the double jurisdiction of Commission and court arises from the fact of the law's delay. Delay is destructive of equity. Rates are like perishable goods. A rate is of to-day. How it would fit three months hence who can tell? What it may be a year hence who can tell? The danger is that the wrong will have been accomplished before you get a hearing of the voice that appeals for right, and that conditions are so fluctuating and changeable that it is very difficult in any event to reach a rectification.

CARRIERS FREQUENTLY PUT ONLY PART OF THEIR TESTIMONY BEFORE THE COMMISSION.

Now, the present system is that when the rate is fixed by the Commission a bill is filed in a Federal court. What happens? The carrier goes into that court and makes the case entirely de novo. I am informed that out of some thirty-two cases decided by the Interstate Commerce Commission, while some twenty-six of them were overruled, it was by new testimony which went to the court and which did not go to the Commission. I have no doubt that the Commission has suffered in public estimate and certainly has undergone most unjust criticism from the fact that the cases decided by the court, which took different views from the Commissioners, were wholly different cases, made up in the court after the Commission had passed upon the subject. In several of these cases in the United States courts the judges have commented upon the fact and have rebuked the practice of railroad companies making new cases in the courts after they have made an imperfect showing and but a partial presentation of their case before the Commission.

Now, then, delay is the great trouble to be obviated, if possible, and the partial hearing before the Commission, antedating full hearing before the court, has been one of the processes by which this delay was increased and by which additional wrong was done. It is the policy and duty of Congress, and it should challenge the best efforts of constructive statesmanship to devise the best plan, regardful of everybody's rights, to get the case from the Commission into the court and to get a speedy hearing. If Congress can accomplish that great result in this bill it will be the author of a piece of remedial legislation which will be useful to all the good citizens of this country and a pillar of righteous, equitable, and just Federal jurisprudence.

CARRIERS AND OTHER PARTIES SHOULD BE REQUIRED TO PUT IN ALL THEIR EVIDENCE BEFORE THE COMMISSION.

It is with diffidence, sir, that I make any suggestion upon the subject, and yet these thoughts have occurred to my mind as thoughts which perhaps might be useful to one who would undertake to accomplish this end. The suggestion that I would make would first be this: Require in this bill that the carrier and all other parties in interest who have a case before the Interstate Commerce Commission shall adduce all the evidence in their behalf on the hearing before the Commission. Why not? Is not that right? Leges vigilantibus, non dormientibus perveniunt.

That is the way the wise jurisprudence of old Rome dealt with such matters. The laws are ready to help people who are awake, but not those who sleep upon their rights. Congress have provided at great cost to the people of this country an able tribunal to hear these cases. Parties in interest are duly challenged and notified to make known their minds and the state of facts respecting a question of great public interest, and the public as well as individuals have the right to require that the truth be fully told and not partially told. Therefore, require it to be told and compel them to tell it when they are summoned there.

ONLY SUCH EVIDENCE AS COULD NOT HAVE BEEN OBTAINED BY DUE DILIGENCE SHOULD BE HEARD BY THE COURTS.

Second. Require that no other evidence as to any rate fixed by the Commission shall be heard by any court in any subsequent proceeding saving only such as could not have been obtained by the reasonable diligence of the party offering the same prior to the final order in such case entered by the Commission. There would then be no danger of anybody being taken by surprise. There would be no danger of anybody being curtailed in right. There would be no danger of anybody being shorn of either legal or equitable remedy. Then, why not? That is due process of law, because it preserves in complete integrity, in unmaimed and in perfect stature, the complete right of a man to be heard both before the Commission of original investigation and to have his case heard again before a court of his country. That deprives him of the opportunity to do injustice in trifling with the laws by making an imperfect showing in the first place and exposing his full hand in the second. That is economical, in that it does not repeat the testimony and procedure, and it guards against the possibility of wrong by allowing out of grace the liberty to introduce any new testimony which could not in diligence have been obtained before.

A COPY OF THE RECORD BEFORE THE COMMISSION SHOULD ACCOMPANY THE BILL OR OTHER PROCESS IN COURT.

Third. Require, in the next place, that the copy of the record before the Commission, with all the testimony written and taken down from verbal recitation, shall be presented and made a part of the entire petition, whether you call it appeal, review, or bill to the upper court.

There, Mr. President, when you do that you have withheld one of the stimulants to interlocutory injunctions. If you file a bill in equity ordinarily to review some past procedure, you are not obliged to put the record of that procedure in your bill. You may put some affidavit of your own or any suggestive thing that you deem proper. The court will look upon the face of what you present. But if you require the complainant in the bill, appeal, or petition of review to put with his papers the full record of what was done before, you at least guard against a partial presentment of the case to the chancellor who will act upon it.

NOTICE OF APPLICATION FOR INJUNCTION.

Then, Mr. President, the suggestion by the Senator from North Carolina [Mr. OVERMAN] as to requiring that notice be given—five days is his suggestion—before any application for injunction is made would also be a just expedient and within the range of the proprieties of process to give the adverse party a full opportunity to do what might be necessary to defend his interests. And thus, Mr. President, you would reduce to a minimum the friction between two bodies, which ought to be made to work as nearly in affinity as the case may be and which should not be put in rival relations to each other. Thus, too, would be avoided the opportunities of turning down the Commission by new evidence purposely withheld from it and afterwards used in court to the unjust injury of its reputation and to the delay of justice.

These, Mr. President, are some of the suggestions which have occurred to my mind. They obviate, in a measure at least, the danger that might arise were Congress to withdraw a remedy now known and now practiced, ancient, based on sound principles, and in vogue in the courts, without substituting something equally substantial and less liable to abuse than it has proved to be.

Mr. President, I have finished discussing all that I care to

discuss about this measure, except the single question what should be involved in the appeal or review before the court after the case has been dealt with by the Interstate Commerce Commission. I had also wished to show a little further the differentiation between this case and the manifold and multiplying cases of administrative law with which we are now dealing. I have, however, been speaking for over three hours, and, if not to my own exhaustion, I am pretty sure to the exhaustion of the patience of my auditors, and I would be very glad if I might be permitted to finish that part of my discussion to-morrow instead of to-day, unless perhaps I should transgress upon some other procedure that has been arranged for to-morrow's session. If not, I would ask this indulgence of the Senate.

NATIONAL HOME FOR DISABLED VOLUNTEER SOLDIERS.

The VICE-PRESIDENT laid before the Senate the joint resolution (H. J. Res. 145) for appointment of members of Board of Managers of the National Home for Disabled Volunteer Soldiers, which was read the first time by its title.

Mr. WARREN. The committee has considered the subject-matter of the point resolution, and I ask unanimous consent that the joint resolution be now considered.

The VICE-PRESIDENT. The joint resolution will be read at length.

The joint resolution was read the second time at length, as follows:

Resolved, etc., That Charles M. Anderson, of Ohio; WILLIAM WARNER, of Missouri; Franklin Murphy, of New Jersey, and JAMES W. WADSWORTH, of New York, be, and the same hereby are, appointed as members of the Board of Managers of the National Home for Disabled Volunteer Soldiers of the United States; Charles M. Anderson, WILLIAM WARNER, and Franklin Murphy to succeed themselves, their terms of service expiring April 21, 1906; JAMES W. WADSWORTH to succeed Gen. Martin T. McMahon, deceased, whose term of office expires April 21, 1910.

By unanimous consent the Senate proceeded to the consideration of the joint resolution.

The joint resolution was reported to the Senate without amendment, ordered to a third reading, read the third time, and passed.

EXECUTIVE SESSION.

Mr. PENROSE. I move that the Senate proceed to the consideration of executive business.

The motion was agreed to; and the Senate proceeded to the consideration of executive business. After one hour and thirty-five minutes spent in executive session the doors were reopened, and (at 6 o'clock p. m.) the Senate adjourned until to-morrow, Wednesday, May 2, 1906, at 12 o'clock meridian.

NOMINATIONS.

Executive nominations received by the Senate May 1, 1906.

PROMOTIONS IN THE NAVY.

Lieut. Commander William L. Rodgers to be a commander in the Navy from the 7th day of January, 1906, vice Commander Lewis C. Heilner, promoted.

Paul J. Bean, a citizen of Texas, to be an assistant civil engineer in the Navy from the 27th day of April, 1906, to fill a vacancy existing in that grade on that date.

Lieut. Thomas J. Senn to be a lieutenant-commander in the Navy from the 7th day of January, 1906, vice Lieut. Commander William L. Rodgers, promoted.

PROMOTION IN THE ARMY—CAVALRY ARM.

First Lieut. Ben H. Dorcy, Fourth Cavalry, to be captain from April 26, 1906, vice Whitman, Thirteenth Cavalry, detailed as quartermaster.

POSTMASTERS.

CALIFORNIA.

T. W. Henry to be postmaster at Paso Robles, in the county of San Luis Obispo and State of California, in place of Alfred R. Booth, deceased.

D. F. Hunt to be postmaster at Santa Barbara, in the county of Santa Barbara and State of California, in place of Francis J. Maguire. Incumbent's commission expired March 18, 1906.

COLORADO.

Frank B. Thomas to be postmaster at Del Norte, in the county of Rio Grande and State of Colorado, in place of John W. Wilson. Incumbent's commission expires June 2, 1906.

CONNECTICUT.

Isaac L. Trowbridge to be postmaster at Naugatuck, in the county of New Haven and State of Connecticut, in place of Isaac L. Trowbridge. Incumbent's commission expires May 21, 1906.

FLORIDA.

Dick M. Kirby to be postmaster at Palatka, in the county of Putnam and State of Florida, in place of Dick M. Kirby. Incumbent's commission expires May 13, 1906.

ILLINOIS.

John A. Leu to be postmaster at Highlands, in the county of Madison and State of Illinois, in place of Louis J. Appel. Incumbent's commission expires June 24, 1906.

W. W. Lowis to be postmaster at Greenville, in the county of Bond and State of Illinois, in place of Alexander L. Hord. Incumbent's commission expires June 7, 1906.

INDIANA.

Charles Carter to be postmaster at Converse, in the county of Miami and State of Indiana, in place of John W. Eward. Incumbent's commission expired December 12, 1905.

William C. Nichols to be postmaster at Lowell, in the county of Lake and State of Indiana, in place of Daniel Lynch. Incumbent's commission expires May 8, 1906.

IOWA.

Gordon R. Badgerow to be postmaster at Sioux City, in the county of Woodbury and State of Iowa, in place of Gordon R. Badgerow. Incumbent's commission expires June 30, 1906.

KANSAS.

P. Moore to be postmaster at Weir, in the county of Cherokee and State of Kansas, in place of Sydney W. Gould, deceased.

John McPherson to be postmaster at Blue Rapids, in the county of Marshall and State of Kansas, in place of John McPherson. Incumbent's commission expired March 14, 1906.

Thomas A. Sawhill to be postmaster at Concordia, in the county of Cloud and State of Kansas, in place of Thomas A. Sawhill. Incumbent's commission expired April 10, 1906.

KENTUCKY.

William A. Waters to be postmaster at Springfield, in the county of Washington and State of Kentucky, in place of William A. Waters. Incumbent's commission expired January 13, 1906.

MASSACHUSETTS.

Frederick B. Horne to be postmaster at Framingham, in the county of Middlesex and State of Massachusetts, in place of Frederick B. Horne. Incumbent's commission expires May 9, 1906.

Reuben K. Sawyer to be postmaster at Wellesley, in the county of Norfolk and State of Massachusetts, in place of Reuben K. Sawyer. Incumbent's commission expires June 2, 1906.

MICHIGAN.

E. Harvey Drake to be postmaster at Yale, in the county of St. Clair and State of Michigan, in place of James Wallace. Incumbent's commission expired March 19, 1906.

Hannibal A. Hopkins to be postmaster at St. Clair, in the county of St. Clair and State of Michigan, in place of Hannibal A. Hopkins. Incumbent's commission expired March 5, 1906.

John D. Smead to be postmaster at Blissfield, in the county of Lenawee and State of Michigan, in place of John D. Smead. Incumbent's commission expires May 9, 1906.

MINNESOTA.

John T. Hammar to be postmaster at Madison, in the county of Lac qui Parle and State of Minnesota, in place of John T. Hammar. Incumbent's commission expired April 5, 1906.

Frank B. Lamson to be postmaster at Buffalo, in the county of Wright and State of Minnesota, in place of Frank B. Lamson. Incumbent's commission expires June 28, 1906.

Fred A. Swartwood to be postmaster at Waseca, in the county of Waseca and State of Minnesota, in place of Fred A. Swartwood. Incumbent's commission expires June 10, 1906.

MISSOURI.

Henry A. Ayre to be postmaster at Oronogo, in the county of Jasper and State of Missouri. Office became Presidential April 1, 1906.

NEBRASKA.

John Cusack to be postmaster at North Bend, in the county of Dodge and State of Nebraska, in place of Charles A. Long. Incumbent's commission expires June 19, 1906.

Frank W. Wake to be postmaster at Genoa, in the county of Nance and State of Nebraska, in place of Frank W. Wake. Incumbent's commission expired March 1, 1906.

NEW HAMPSHIRE.

Fred H. Ackerman to be postmaster at Bristol, in the county of Grafton and State of New Hampshire, in place of Fred H. Ackerman. Incumbent's commission expires June 25, 1906.

NEW YORK.

Edward Bolard to be postmaster at Salamanca, in the county of Cattaraugus and State of New York, in place of John J. Inman. Incumbent's commission expired February 10, 1906.

Willard F. Sherwood to be postmaster at Hornell (late Hornellsville), in the county of Steuben and State of New York, in place of Willard F. Sherwood, to change name of office.

OHIO.

Samuel H. Bolton to be postmaster at McComb, in the county of Hancock and State of Ohio, in place of Reuben A. Roether. Incumbent's commission expired March 13, 1906.

John H. Oakley to be postmaster at Ravenna, in the county of Portage and State of Ohio, in place of John H. Oakley. Incumbent's commission expired April 18, 1906.

Manning M. Rose to be postmaster at Marietta, in the county of Washington and State of Ohio, in place of Manning M. Rose. Incumbent's commission expires May 7, 1906.

Seth M. Snyder to be postmaster at Coshocton, in the county of Coshocton and State of Ohio, in place of Clifford B. McCoy. Incumbent's commission expires June 9, 1906.

E. R. Titus to be postmaster at Middleport, in the county of Meigs and State of Ohio, in place of Lewis O. Cooper. Incumbent's commission expires June 9, 1906.

PENNSYLVANIA.

Silas C. Daugherty to be postmaster at Jeannette, in the county of Westmoreland and State of Pennsylvania, in place of Silas C. Daugherty. Incumbent's commission expired March 21, 1906.

Charles A. Dunlap to be postmaster at Manheim, in the county of Lancaster and State of Pennsylvania, in place of Charles A. Dunlap. Incumbent's commission expires May 29, 1906.

Richard M. Hunt to be postmaster at Houtzdale, in the county of Clearfield and State of Pennsylvania, in place of Richard M. Hunt. Incumbent's commission expires June 30, 1906.

Rudolph Neiman to be postmaster at Red Lion, in the county of York and State of Pennsylvania, in place of Rudolph Neiman. Incumbent's commission expired April 10, 1906.

John Scher, jr., to be postmaster at Dushore, in the county of Sullivan and State of Pennsylvania, in place of John Scher, jr. Incumbent's commission expires June 30, 1906.

Sydney S. Smith to be postmaster at Punxsutawney, in the county of Jefferson and State of Pennsylvania, in place of David M. McQuown. Incumbent's commission expired April 10, 1906.

TEXAS.

John A. Gray to be postmaster at Laredo, in the county of Webb and State of Texas, in place of Frank H. Pierce, deceased.

VERMONT.

Charles A. Parker to be postmaster at West Rutland, in the county of Rutland and State of Vermont, in place of Charles A. Parker. Incumbent's commission expires June 30, 1906.

WEST VIRGINIA.

Mathew A. Jackson to be postmaster at Lewisburg, in the county of Greenbrier and State of West Virginia, in place of Mathew A. Jackson. Incumbent's commission expired March 15, 1906.

Horatio S. Whetsell to be postmaster at Kingwood, in the county of Preston and State of West Virginia, in place of Horatio S. Whetsell. Incumbent's commission expired April 11, 1906.

CONFIRMATIONS.

Executive nominations confirmed by the Senate May 1, 1906.

COLLECTORS OF CUSTOMS.

John Peterson, of Minnesota, to be collector of customs for the district of Minnesota, in the State of Minnesota.

Charles T. Stanton, of Connecticut, to be collector of customs for the district of Stonington, in the State of Connecticut.

POSTMASTERS.

GEORGIA.

Frederich D. Dismuke, jr., to be postmaster at Thomasville, in the county of Thomas and State of Georgia.

WYOMING.

Ida A. Hewes to be postmaster at Casper, in the county of Natrona and State of Wyoming.

Harvey Springer to be postmaster at Cambria, in the county of Weston and State of Wyoming.

HOUSE OF REPRESENTATIVES.

TUESDAY, *May 1, 1906.*

The House met at 12 o'clock noon.

Prayer by the Chaplain, Rev. HENRY N. COUDEN, D. D.

The Journal of the proceedings of yesterday was read and approved.

INDIAN APPROPRIATION BILL.

Mr. SHERMAN. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Indian appropriation bill, to nonconcur in the Senate amendments and ask for a conference.

The SPEAKER. The gentleman from New York asks unanimous consent to take from the Speaker's table the Indian appropriation bill, to nonconcur in the Senate amendments, and ask for a conference.

Mr. WILLIAMS. Mr. Speaker, I object.

Mr. SHERMAN. Will the gentleman reserve his objection for a moment to hear an explanation of the matter?

Mr. WILLIAMS. It is hardly worth while to reserve it, but I will do it if the gentleman wishes to make a statement.

Mr. SHERMAN. I desire to inform the gentleman that I have consulted with the gentleman from Texas, the ranking minority member of the committee, and the course suggested is entirely agreeable to him. There are between two and three hundred amendments to the bill, and in the neighborhood of $3,000,000 is added, so that the gentleman from Mississippi sees that it will take some considerable time in conference, and the sooner we get it there the better.

Mr. WILLIAMS. I understand.

Mr. SHERMAN. And I see no good could be gained by going into committee——

Mr. WILLIAMS. Mr. Speaker, still reserving the objection, I will state to the gentleman from New York that I saw in the Washington Post the other day where a girl out in Arizona had been asleep for seven weeks and waked up, but when she found that the sleeping statehood bill in the conference committee beat her record she went back to sleep again. I shall object, Mr. Speaker.

The SPEAKER. The gentleman from Mississippi objects.

CHANGE OF REFERENCE.

Mr. GROSVENOR. Mr. Speaker, I ask unanimous consent to change the reference of Senate bill 5572 from the Committee on Interstate and Foreign Commerce to the Committee on Merchant Marine and Fisheries. I have consulted with the chairman of that committee, and he makes no objection to the change.

The SPEAKER. It is in order to move, if the gentleman so desires.

Mr. GROSVENOR. If the gentleman from Mississippi objects, I shall simply do so.

Mr. WILLIAMS. The gentleman from Ohio had better move to save trouble.

Mr. GROSVENOR. Mr. Speaker, I move to change the reference of Senate bill 5572 from the Committee on Interstate and Foreign Commerce to the Committee on Merchant Marine and Fisheries.

The SPEAKER. The Clerk will report the title of the bill.

The Clerk read as follows:

S. 5572. An act to amend section 4348 of the Revised Statutes establishing great coasting districts of the United States.

The SPEAKER. The gentleman from Ohio moves that the reference to this bill be changed from the Committee on Interstate and Foreign Commerce to the Committee on Merchant Marine and Fisheries.

The question was taken; and the motion was agreed to.

AGRICULTURAL APPROPRIATION BILL.

Mr. WADSWORTH. Mr. Speaker, I move that the House resolve itself into Committee of the Whole House on the state of the Union for the further consideration of the bill H. R. 18537—the agricultural appropriation bill.

QUESTION OF PERSONAL PRIVILEGE.

Mr. GAINES of Tennessee. Mr. Speaker, a question of personal privilege.

The SPEAKER. The gentleman from New York [Mr. WADSWORTH] moves that the House resolve itself into Committee of the Whole House on the state of the Union for the further consideration of the agricultural appropriation bill. Is there objection?

Mr. GAINES of Tennessee. Mr. Speaker——

The SPEAKER. For what purpose does the gentleman rise?

Mr. GAINES of Tennessee. I rise to a question of personal privilege.

The SPEAKER. The gentleman will state it.

Mr. GAINES of Tennessee. There appears in this morning's Washington Post a report, purporting to be of yesterday's proceedings of the House, calculated to reflect upon me as a Member of this House and upon my standing as a Member of this House and upon the confidence that, as a Member of this House, the House should have in me, and which I am entitled to have. I beg the pardon of the House for taking up its time, but I feel somewhat grieved and aggrieved about it, and beg the indulgence of this honorable body.

Mr. DALZELL. Mr. Speaker, I think the House ought to have the article in advance of stating any question of personal privilege.

Mr. GAINES of Tennessee. I am just fixing to read it.

Mr. LIVINGSTON. Send it to the desk.